

From: Wortman, Eric
Location: 919-541-4087
Importance: Normal
Subject: Air Division Directors Bi-Weekly Call
Start Date/Time: Mon 4/25/2016 8:00:00 PM
End Date/Time: Mon 4/25/2016 9:00:00 PM
[CPP.111\(b\).Key Issues in 111\(b\) Litigation.OGC.4.8.16.doc](#)
[CPP.Key Issues in 111\(d\) Litigation.SJJ.4.7.16.doc](#)
[CPP.Litigation Status.4.25.16.docx](#)
[CPP.Litigation Status.One-Pager.SJJ.4.25.16.doc](#)

PLEASE CALL THIS NEW NUMBER **919-541-4087**

Biweekly Air Division Directors Conference Call

Conference Line:
 Participant Passcode:

Date: Monday, April 25th, 2016
 Time: 4:00 to 5:00 Eastern Time

Agenda

4:00 - Roll Call

Attendees	
R1:	OAQPS:
R2:	OAP:
R3:	OTAQ:
R4:	ORIA:
R5:	OGC:
R6:	OAPPS:
R7:	ORD:
R8:	OECA:
R9:	OPMO:
R10:	IO:

4:05 - Clean Power Plan Update: Scott Jordan (OGC)

4:20 - Fenceline Monitoring: Jennifer Caparoso (OAQPS)

4:30 - Art Glass Air Toxics update: Ed Messina (OECA) / Keith Barnett (OAQPS)

4:35 - SIP Dashboard Update: Tom Coda (OAQPS) [Click here for SIP Dashboard](#)

4:40 - Communications Update: John Millet (OAR)

4:45 - Program Office Updates:

- a. OAP: Jackie Krieger
- b. OTAQ: Tia Sutton
- c. ORIA: Ron Fraass
- d. OAQPS: Mary Henigin

4:55 - Regional Round Robin

Upcoming Meetings:

- AAPCA Spring Meeting: April 28-29, Columbia, SC
- National Radiological Emergency Preparedness Conference: May 2-6, Charleston, SC
- ADD Meeting: May 11-12, Indianapolis, IN
- Spring 2016 NACAA Meeting: May 16-18, Sante Fe, NM
- National Tribal Forum on Air Quality: May 17-19, 2016, Niagara Falls, NY
- Conference of Radiation Control Program Directors annual meeting: May 16-19, Lexington, KY
- AWMA Conference & Exhibition: June 20-23, New Orleans, LA
- CAAAC Meeting: June 28-29, Washington, DC
- EPA / NACAA National Air Monitoring Conference: August 8-11, St. Louis, MO
- Fall 2016 NACAA Meeting: October 17-19, Minneapolis, MN (stay tuned for more info)

Eric Wortman | OAR Lead Region Coordinator
U.S. Environmental Protection Agency - Region 8
1595 Wynkoop Street (8P-AR), Denver, Colorado 80202
Telephone: (303) 312-6649 Email: wortman.eric@epa.gov
[OAR Lead Region SharePoint Site](#)

To: McCabe, Janet[McCabe.Janet@epa.gov]
Cc: Meiburg, Stan[Meiburg.Stan@epa.gov]; Distefano, Nichole[DiStefano.Nichole@epa.gov]; Herckis, Arian[Herckis.Arian@epa.gov]; Purchia, Liz[Purchia.Liz@epa.gov]; Ragland, Micah[Ragland.Micah@epa.gov]; Rupp, Mark[Rupp.Mark@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]; Vaught, Laura[Vaught.Laura@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]; Fritz, Matthew[Fritz.Matthew@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Pieh, Luseni[Pieh.Luseni@epa.gov]; Scaggs, Ben[Scaggs.Ben@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Millett, John[Millett.John@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Shaw, Betsy[Shaw.Betsy@epa.gov]; Stewart, Lori[Stewart.Lori@epa.gov]; Jordan, Deborah[Jordan.Deborah@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Burke, Thomas[Burke.Thomas@epa.gov]; Nishida, Jane[Nishida.Jane@epa.gov]; Giles-AA, Cynthia[Giles-AA.Cynthia@epa.gov]
From: Administrator; McCarthy, Gina
Sent: Sat 2/20/2016 3:03:45 PM
Subject: Re: OAR Hot List for week of February 22

Not Responsive

Sent from my iPhone

> On Feb 20, 2016, at 8:59 AM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:
>
> OAR Hot List
> Week of February 22, 2016
>
> Climate Action Plan: On Tuesday we had a great call with the states to answer their questions about the Clean Power Plan stay. We had more than 200 state reps in attendance and the questions ranged from whether we would still be spending funds on CPP implementation to how states could voluntarily work with the agency going forward. We have a process in place to gather and respond to more refined questions that come in over time. We also met with the Clean Energy Group, NRDC, and Lawler Strategies on a wide range of topics. There are plenty of people still eager to talk to us and meet on the CPP, and we've heard of very few events being cancelled. We continue to work with OGC and DOJ to better understand what steps we can take while the stay is in place.

Not Responsive

Not Responsive

To: Garvin, Shawn[garvin.shawn@epa.gov]
Cc: Rupp, Mark[Rupp.Mark@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]; Fritz, Matthew[Fritz.Matthew@epa.gov]; Purchia, Liz[Purchia.Liz@epa.gov]; McCabe, Janet[McCabe.Janet@epa.gov]
From: ^{Administrator}McCarthy, Gina
Sent: Mon 2/15/2016 8:08:21 PM
Subject: Re: Delaware position on CPP and Stay

This is great Shawn. Thank you.

Sent from my iPhone

On Feb 15, 2016, at 3:05 PM, Garvin, Shawn <garvin.shawn@epa.gov> wrote:

FYI - This is what I received from MD:

"We'll keep working on a plan that works for Maryland. That means continued stakeholder meetings to inform our work on the state's greenhouse gas reduction plan, RGGI, and the pending Clean Power Plan."

I have not heard from WV yet, I plan to call them this week. All my other states are moving forward.

Thanks - Shawn

Sent from my iPhone

On Feb 15, 2016, at 2:37 PM, ^{Administrator}McCarthy, Gina <^{Administrator}McCarthy.Gina@epa.gov> wrote:

Good for them!

Sent from my iPhone

On Feb 15, 2016, at 1:07 PM, Rupp, Mark <Rupp.Mark@epa.gov> wrote:

----- Forwarded message -----

From: "**Cherry, Philip J. (DNREC)**" <Philip.Cherry@state.de.us>
Date: Mon, Feb 15, 2016 at 9:22 AM -0800

Subject: Delaware position on CPP and Stay
To: "Rupp, Mark" <Rupp.Mark@epa.gov>
Cc: "Gabriel S Pacyniak (Pacyniak@law.georgetown.edu)"
<Pacyniak@law.georgetown.edu>, "Mirzakhali, Ali (DNREC)"
<Ali.Mirzakhali@state.de.us>

Mark –

Good Afternoon. The State of Delaware, Department of Natural Resources and Environmental Control (DNREC) will be issuing the attached press release today affirming our intention to move forward with preparing a plan to comply with the Clean Power Plan.

We wanted to be sure EPA knew of our intentions, and our support for the CPP overall.

Please let me know if you have questions. Thank you.

Philip Cherry

Director, Division of Energy and Climate

Department of Natural Resources and Environmental Control

State of Delaware

100 W. Water St.

Suite 5A

Dover, DE 19904

302.735.3480

Personal Cell/email

Philip.cherry@state.de.us

<02-15-16 Delaware_Clean_Power Plan_PR (2).docx>

To: Purchia, Liz[Purchia.Liz@epa.gov]; Fried, Becky[Fried.Becky@epa.gov]
From: Administrator; McCarthy, Gina
Sent: Wed 2/10/2016 8:49:51 PM
Subject: 02 10 16 GM Mass Mailergm - CPP Stay_v3.docx
02 10 16 GM Mass Mailergm - CPP Stay_v3.docx

Take a look and share if you want.

To: Administrator Gina Administrator; Meiburg, Stan[Meiburg.Stan@epa.gov]; Fritz, Matthew[Fritz.Matthew@epa.gov]; Scaggs, Ben[Scaggs.Ben@epa.gov]
Cc: Distefano, Nichole[DiStefano.Nichole@epa.gov]; Vaught, Laura[Vaught.Laura@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]; Rupp, Mark[Rupp.Mark@epa.gov]; Purchia, Liz[Purchia.Liz@epa.gov]; Pieh, Lusenl[Pieh.Lusenl@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Osborne, Howard[Osborne.Howard@epa.gov]; Ragland, Micah[Ragland.Micah@epa.gov]
From: Bloom, David
Sent: Mon 2/29/2016 12:59:55 AM
Subject: OCFO Update

Not Responsive

FY 2017 Addendums to the FY 2016-2017 NPM Guidances: Public comment underway but OAR has not submitted their draft Addendum, which is still undergoing OGC review due to the SCOTUS stay of the Clean Power Plan.

Not Responsive

Not Responsive

David
Sent from my iPhone

To: Administrator Gina Administrator; Meiburg, Stan[Meiburg.Stan@epa.gov]; Distefano, Nichole[DiStefano.Nichole@epa.gov]; Herckis, Arian[Herckis.Arian@epa.gov]; Purchia, Liz[Purchia.Liz@epa.gov]; Ragland, Micah[Ragland.Micah@epa.gov]; Rupp, Mark[Rupp.Mark@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]; Vaught, Laura[Vaught.Laura@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]; Fritz, Matthew[Fritz.Matthew@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Pieh, Lusenil[Pieh.Lusenil@epa.gov]; Scaggs, Ben[Scaggs.Ben@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Millett, John[Millett.John@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Shaw, Betsy[Shaw.Betsy@epa.gov]; Stewart, Lori[Stewart.Lori@epa.gov]; Jordan, Deborah[Jordan.Deborah@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Burke, Thomas[Burke.Thomas@epa.gov]; Nishida, Jane[Nishida.Jane@epa.gov]; Giles-AA, Cynthia[Giles-AA.Cynthia@epa.gov]
From: McCabe, Janet
Sent: Sat 2/20/2016 1:59:35 PM
Subject: OAR Hot List for week of February 22

OAR Hot List
Week of February 22, 2016

Climate Action Plan: On Tuesday we had a great call with the states to answer their questions about the Clean Power Plan stay. We had more than 200 state reps in attendance and the questions ranged from whether we would still be spending funds on CPP implementation to how states could voluntarily work with the agency going forward. We have a process in place to gather and respond to more refined questions that come in over time. We also met with the Clean Energy Group, NRDC, and Lawler Strategies on a wide range of topics. There are plenty of people still eager to talk to us and meet on the CPP, and we've heard of very few events being cancelled. We continue to work with OGC and DOJ to better understand what steps we can take while the stay is in place.

Next week, Joe plans to meet with the Ute Tribe and participate in a call with Senate minority appropriations staff on stay implications for CPP funding.

Not Responsive

Not Responsive

Not Responsive

To: Administrator Gina Administrator
Cc: Goffman, Joseph[Goffman.Joseph@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]
From: McCabe, Janet
Sent: Sat 2/13/2016 3:14:36 PM
Subject: Re: Brookings Blog on SCOTUS CPP Stay

Not Responsive

On Feb 12, 2016, at 9:41 PM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Thanks

- Joseph Goffman
Sent from my iPhone

On Feb 12, 2016, at 9:41 PM, Garbow, Avi <Garbow.Avi@epa.gov> wrote:

Not sure if you are on sussman's distribution list - but his blog is a good read.

Avi

Avi S. Garbow
General Counsel
U.S. Environmental Protection Agency

Sent from my iPhone

Begin forwarded message:

From: Robert Sussman <bobsussman1@comcast.net>
Date: February 12, 2016 at 5:27:17 PM EST
To: Undisclosed recipients;;
Subject: Brookings Blog on SCOTUS CPP Stay

Here's a link to my latest blog, on the SCOTUS stay of the Clean Power Plan.

<http://www.brookings.edu/blogs/planetpolicy/posts/2016/02/12-supreme-court-clean-power-plan-missteps-sussman>

Feedback welcome!

Best --- BOB

Robert M. Sussman
3133 Connecticut Avenue, NW #2405
Washington DC 20008
(202)-758-2227 (H)
(202)-716-0118 (C)
bobsussman1@comcast.net

To: Administrator Gina Administrator
Cc: McCabe, Janet[McCabe.Janet@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]
From: Goffman, Joseph
Sent: Sat 2/13/2016 1:56:26 PM
Subject: Re: Brookings Blog on SCOTUS CPP Stay

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To: McCabe, Janet[McCabe.Janet@epa.gov]
Cc: Garbow, Avi[Garbow.Avi@epa.gov]; Administrator, Gina Administrator
From: Goffman, Joseph
Sent: Sat 2/13/2016 5:22:12 AM
Subject: Re: Brookings Blog on SCOTUS CPP Stay

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To: Goffman, Joseph[Goffman.Joseph@epa.gov]
Cc: Garbow, Avi[Garbow.Avi@epa.gov]; Administrator Gina
From: McCabe, Janet
Sent: Sat 2/13/2016 4:48:21 AM
Subject: Re: Brookings Blog on SCOTUS CPP Stay

Administrator

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(202)-716-0118 (C)
bobsussman1@comcast.net

To: Administrator Gina Administrator
From: McCabe, Janet
Sent: Sat 2/13/2016 4:00:44 AM
Subject: Re: CPP stay

I will

Sent from my iPhone

On Feb 12, 2016, at 8:50 PM, Administrator Gina <Administrator> wrote:

Thanks Janet. Please tell him to keep the faith, stay active and good things will happen.

Sent from my iPhone

On Feb 12, 2016, at 7:01 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:

Gina--ken asked that I pass this note along to you. I'm happy to convey an answer back on my email if you want.

Sent from my iPhone

Begin forwarded message:

From: Ken Kimmell <KKimmell@ucsusa.org>
Date: February 12, 2016 at 1:00:19 PM EST
To: "Janet McCabe (McCabe.janet@Epa.gov)" <McCabe.janet@Epa.gov>
Subject: CPP stay

Janet, I have been meaning to write since Tuesday night, and I figured better late than never.

I imagine that you must feel shell shocked right now. I know I do. While It is always risky to speculate on what a court might be thinking, I believe it is possible that one or more of the Justices wanted the fullness of time to sort this out, and that the ruling is therefore not a clear signal that a majority will overturn the CPP. I wanted to you know that we will do everything we can to keep progress moving while the litigation is pending, and to influence the outcome of the ruling on the merits.

And that we are thinking of you, and the Administrator, and how this must feel.

Ken

PS—If you could forward this to the Administrator, that would be great.

Ken Kimmell

President

Union of Concerned Scientists

Tel: (617) 547-5552

Twitter: @KenKimmell

The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems. Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.

www.ucsusa.org | Take action with our [citizen network](#) or [expert network](#). | [Support our work](#). |

Join the conversation on our [blog](#) or follow us on [Facebook](#) and [Twitter](#).

To: Garbow, Avi[Garbow.Avi@epa.gov]
Cc: Administrator Gina; Administrator; McCabe, Janet[McCabe.Janet@epa.gov]
From: Goffman, Joseph
Sent: Sat 2/13/2016 2:41:47 AM
Subject: Re: Brookings Blog on SCOTUS CPP Stay

Thanks

- Joseph Goffman
Sent from my iPhone

On Feb 12, 2016, at 9:41 PM, Garbow, Avi <Garbow.Avi@epa.gov> wrote:

Not sure if you are on sussman's distribution list - but his blog is a good read.

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Avi S. Garbow
General Counsel
U.S. Environmental Protection Agency

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Washington DC 20008

(202)-758-2227 (H)

(202)-716-0118 (C)

bobsussman1@comcast.net

To: Administrator Gina Administrator]; McCabe, Janet[McCabe.Janet@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]
From: Garbow, Avi
Sent: Sat 2/13/2016 2:41:08 AM
Subject: Fwd: Brookings Blog on SCOTUS CPP Stay

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Avi S. Garbow
General Counsel
U.S. Environmental Protection Agency

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(202)-758-2227 (H)
(202)-716-0118 (C)
bobsussman1@comcast.net

To: Administrator Gina Administrator
From: McCabe, Janet
Sent: Sat 2/13/2016 12:01:04 AM
Subject: Fwd: CPP stay

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Sent from my iPhone

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Subject: CPP stay

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And that we are thinking of you, and the Administrator, and how this must feel.

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Ken Kimmell

President

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The Union of Concerned Scientists puts rigorous, independent science to work to solve our planet's most pressing problems. Joining with citizens across the country, we combine technical analysis and effective advocacy to create innovative, practical solutions for a healthy, safe, and sustainable future.

www.ucsusa.org | Take action with our [citizen network](#) or [expert network](#). | [Support our work](#). |

Join the conversation on our [blog](#) or follow us on [Facebook](#) and [Twitter](#).

To: Banister, Beverly[Banister.Beverly@epa.gov]
From: Banister, Beverly
Sent: Wed 2/17/2016 6:28:37 PM
Subject: Fwd: [February 16] FY17 Budget Request, Update on the CPP, Electronics Challenge Awards, Town Hall this Week, African American History Month event, Opportunities in ORD and OLEM and a "How-to" Help Center

Sent from my iPhone

Begin forwarded message:

From: "This Week @ EPA" <epanews@epa.gov>
To: "This Week @ EPA" <epanews@epa.gov>
Subject: [February 16] FY17 Budget Request, Update on the CPP, Electronics Challenge Awards, Town Hall this Week, African American History Month event, Opportunities in ORD and OLEM and a "How-to" Help Center

[This Week @ EPA banner]

February 16, 2016

Senior Leadership Message | Hot Topics | Key Dates | Video Spotlight | Career Corner | IT Corner

Not Responsive

Not Responsive

Hot Topics

Update on the Clean Power Plan

[Image saying "The Clean Power Plan"]

In a recent message to all EPA employees, Administrator McCarthy provided an update about the Supreme Court's decision to stay implementation of EPA's Clean Power Plan and what that means. As Administrator McCarthy shared, the decision "was disappointing, but it doesn't change the path that's already been charted for climate action in this country. You can't stay climate change, and you can't stay climate action."

Read more details in the Administrator's Message: Update on the Clean Power

Plan<<https://fs.epa.gov/adfs/ls/?wa=wsignin1.0&wtrealm=urn:federation:MicrosoftOnline&wctx=wa%3Dwsj>

Not Responsive

Not Responsive

Not Responsive

Not Responsive

Not Responsive

Not Responsive

Not Responsive

Not Responsive

Not Responsive

To: Distefano, Nichole[DiStefano.Nichole@epa.gov]
Cc: Garbow, Avi[Garbow.Avi@epa.gov]; Rackoff, Jonathan[Rackoff.Jonathan@epa.gov]
From: Sublett, Stacey
Sent: Mon 3/21/2016 5:57:54 PM
Subject: Hearing Prep Materials: CPP/Inhofe Letter Talking Points from OGC-ARLO
[Document1 \(00000002\).docx](#)

Hi Nichole,

Please find attached draft talking points prepared by OGC-ARLO and OAR in response to your request for hearing prep materials regarding the Inhofe letter questions on the Clean Power Plan.

Please let us know if you would like us to adjust the format of this document such that it is more in line with standard Q/As.

Many thanks!

Stacey

From: Schmidt, Lorie
Sent: Monday, March 21, 2016 11:02 AM
To: Sublett, Stacey <Sublett.Stacey@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>
Cc: Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: TPS for hearing prep

Attached is a document that contains two things

- Talking points we prepared in response to Inhofe letter questions
- Drafts of what OAR submitted for hearing prep

Ex. 5 - Deliberative

Ex. 5 - Deliberative

To: Garbow, Avi[Garbow.Avi@epa.gov]; Shenkman, Ethan[Shenkman.Ethan@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]
From: Schramm, Daniel
Sent: Mon 3/21/2016 4:53:14 PM
Subject: Others' views on the stay

FYI - You may have seen this already...

Ex. 5 - Deliberative

Ex. 5 - Deliberative

Daily News

McCabe Says 'Premature' To Speculate Whether ESPS Deadlines Delayed

March 18, 2016

EPA's acting air chief Janet McCabe is reiterating agency statements that it is too soon to know how the Supreme Court stay of EPA's existing power plant greenhouse gas rule will affect the regulation's deadlines, while suggesting the later compliance deadlines may not be delayed if the rule is ultimately upheld.

"It's actually a little premature to be speculating specifically about the compliance dates in the Clean Power Plan. I think we need to see how the litigation goes," McCabe told the American Council on Renewable Energy (ACORE) Policy Forum March 17.

But McCabe also noted that the compliance deadlines are "significantly off in the future," referring to the compliance period start date in 2022 and the final compliance deadline in 2030. The 2022 date is delayed by two years from the agency's proposed existing source performance standards (ESPS), also known as the Clean Power Plan.

"[W]e quite deliberately built a significant amount of time into the implementation

dates of the Clean Power Plan because we knew that these programs took time,” McCabe said. The acting air chief did acknowledge, however, that the Sept. 6 deadline for states to submit initial plans “is not a date that states will need to meet.”

McCabe’s comments underscore [private comments](#) she made last month -- shortly after the high court issued its stay -- suggesting that the agency may not extend some of the rule’s compliance targets, including its initial 2022 start date.

But such comments have galvanized agency critics, who charge that the agency is violating the high court’s stay, which they say requires the agency to delay all deadlines.

The U.S. Chamber of Commerce in a [March 2 white paper](#) charged that the stay requires EPA to “toll,” or delay, all of the rule’s compliance deadlines -- not just those that fall within the period of the stay. It is “beyond dispute” that any deadline that falls within the period of the stay is “without effect,” the white paper reads. “Second, administration officials have suggested that there is some debate about whether future deadlines will spring into effect as originally intended if the Rule is reinstated. However . . . the law is clear that all of the Rule’s deadlines should be tolled for at least the length of the Stay itself in the event the Rule is eventually upheld,” the paper adds.

Sen. James Inhofe (R-OK), chairman of the Senate environment committee, has echoed the Chamber, urging EPA in a [March 10 letter](#) to clarify whether it will abide by the “inherent” requirements in the Supreme Court order to delay all ESPS deadlines.

Inhofe in his letter cites a portion of Basin Electric Cooperative’s request to the high court that calls for the extension of “all compliance dates by the number of days between the publication of the Rule and a final decision in this consolidated appeal.”

“There should be no doubt that the granting of this and similar requests in other stay applications makes clear that all [ESPS] deadlines should be tolled even if the rule ultimately survives judicial review,” Inhofe argues.

Legal Uncertainty

The issue is uncertain, however, because the Supreme Court's one-page Feb. 9 order staying the ESPS does not address how the stay will be enforced nor how the agency should adjust compliance deadlines should the rule ultimately be upheld.

Georgetown law professor Lisa Heinzerling, who helped craft EPA's initial GHG program as head of the agency's policy office, charges in a [forthcoming law review article](#) that the stay provides no indication of how the agency should or should not proceed and is likely unenforceable.

Prominent environmental lawyer Richard Revesz, who directs New York University's Institute for Policy Integrity, argued in a [recent op-ed in *The Hill*](#) that past practice -- and high court precedent -- gives a lower court wide discretion on how to adjust the rule's deadlines.

Revesz cites a 2009 Supreme Court ruling in *Nken v. Holder* in which Chief Justice John Roberts notes a stay "halt[s] or postpon[es] some portion of the proceeding, or . . . temporarily divest[s] an order of enforceability," while an injunction "directs the conduct of a party, and does so with the backing of [a court's] full coercive powers." Thus, he argues, because a stay was issued for the ESPS, it "holds much less power," focusing only on the enforceability of the rule while the stay is in place.

Revesz in his op-ed also notes there is legal backing for EPA to continue work on the ESPS' policy framework -- including the model trading rules and the early action incentive program -- while the stay is in place. "In fact, there is ample precedent for federal agencies continuing to work on policies stayed by courts," Revesz writes, citing EPA's NOx-SIP call and other rules.

In her ACORE remarks, McCabe doubled down on the agency's commitment to continue work on developing the federal implementation plan, including the model trading rules, and the Clean Energy Incentive Program (CEIP).

“We are continuing to work on those programs in a way that I want to emphasize is consistent with the stay but will help provide tools to states to the extent that they are looking for them, and also will mean that we will lose as little time as possible when the litigation is finally resolved,” McCabe said.

Noting the public engagement process for the CEIP that EPA conducted last fall, McCabe said the agency received valuable input on how to structure the incentive program. The agency announced in January prior to the ESPS stay that it would release a proposed action early this year outlining further details of the program, and McCabe suggested EPA will still do so, though she did not mention a timeline for its release.

“We’ve indicated that we do intend to put some more detail out for people, so we will be doing that,” McCabe said.

The acting air chief also reminded stakeholders that EPA would, “while fully respecting the existence of the stay,” continue to work with states that voluntarily chose to move forward with ESPS compliance planning.

“We have had states reaching out to us to ask for assistance,” she said, adding that “the Clean Power Plan for many states has represented a sensible way to move forward, so they’re asking question about the Clean Power Plan.” -- *Abby Smith* (asmith@iwpnews.com)

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189732

Daniel Schramm

U.S. EPA Office of General Counsel

(202) 564-3377

schramm.daniel@epa.gov

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

To: OGC RCs and DRCs[OGC_RCs_and_DRCs@epa.gov]; OGC ALL
USERS[OGC_ALL_USERS@epa.gov]
From: Hall, William
Sent: Fri 3/4/2016 4:14:46 PM
Subject: Notes from 3/1/15 Senior Staff Meeting
[REGIONAL HAZE DECISION SUMMARY.pdf](#)
[AZrh1 opinion.pdf](#)
[EPA FY 2015 ECCR Annual Report final.pdf](#)
[Tribal Treaty Rights Legal Memo \(OGC\).pdf](#)

Avi chaired the meeting.

Not Responsive

Not Responsive

Lorie also stated that, although EPA is not implementing the Clean Power Plan, we are providing assistance to states that request it. In that vein, the Administrator announced last week that we will be moving forward with the state model rules (which were proposed last August) and with actions related to the Clean Energy Incentive Program (CEIP) component of the CPP. As we move forward, we will be certain to act consistently with the stay.

Not Responsive

Not Responsive

To: Schmidt, Lorie[Schmidt.Lorie@epa.gov]
Cc: Garbow, Avi[Garbow.Avi@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]
From: Kyle Danish
Sent: Fri 2/12/2016 8:28:14 PM
Subject: Re: Google / Amicus Brief

Terrific. Thanks Lorie. Howard I may have some airport time to call you but it might not work for today.

Sent from my iPhone

On Feb 12, 2016, at 1:19 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Kyle. Howard is expecting your call. His number is 202-564-5582.
Lorie

Lorie J. Schmidt
Associate General Counsel for Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Sent from my iPhone

On Feb 12, 2016, at 8:01 AM, Kyle Danish <kwd@vnf.com> wrote:

Many thanks for the quick response, Avi. Lorie and I happen to be at the same conference this morning, so we may have a chance to get the ball rolling. We look forward to working with you all on this.

Best

Kyle

Kyle W. Danish

Van Ness Feldman LLP

1050 Thomas Jefferson St., N.W.

Washington, D.C. 20007-3877

Ph: (202) 298-1876

Fx: (202) 338-2416

Cell: (202) 361-5621

email: kwd@vnf.com

Learn more about Van Ness Feldman by visiting www.vnf.com

From: Garbow, Avi [<mailto:Garbow.Avi@epa.gov>]

Sent: Friday, February 12, 2016 9:59 AM

To: Kyle Danish

Cc: Schmidt, Lorie; Zenick, Elliott; Hoffman, Howard

Subject: RE: Google / Amicus Brief

Thanks, Kyle. Very much appreciate you reaching out on behalf of your client. I am going to copy on this email Lorie Schmidt, Elliott Zenick, and Howard Hoffman – who are the key players in OGC working on the briefing - and ask that one of them reach out to you to set up a call soon.

Regards,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

From: Kyle Danish [<mailto:kwd@vnf.com>]
Sent: Friday, February 12, 2016 9:56 AM
To: Garbow, Avi <Garbow.Avi@epa.gov>
Subject: Google / Amicus Brief

Dear Avi:

I hope you are doing well.

As you may recall, we've been providing counsel to Google on the CPP litigation – including assisting them in preparing a declaration in support of the opposition to the stay motions in the DC Circuit.

Google is now interested in submitting an amicus brief if they can recruit some other companies that are also major purchasers of clean energy. They are in the process of doing that outreach now.

I would appreciate the opportunity to talk with you or others on your team about what would be a useful amicus brief from such a group of companies.

I'm traveling today but I will be checking my email and voicemail.

Many thanks

Kyle

Kyle W. Danish

Van Ness Feldman LLP

1050 Thomas Jefferson St., N.W.

Washington, D.C. 20007-3877

Ph: (202) 298-1876

Fx: (202) 338-2416

Cell: (202) 361-5621

email: kwd@vnf.com

Learn more about Van Ness Feldman by visiting www.vnf.com

To: Drinkard, Andrea[Drinkard.Andrea@epa.gov]
Cc: Purchia, Liz[Purchia.Liz@epa.gov]; Harrison, Melissa[Harrison.Melissa@epa.gov]; Millett, John[Millett.John@epa.gov]; McCabe, Janet[McCabe.Janet@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]
From: Fried, Becky
Sent: Wed 2/10/2016 9:41:20 PM
Subject: RE: Edits on the TPs and the Mass Mailer
02 10 16 GM Mass Mailer - CPP Stay - gm.docx
02 10 16 CPP Stay TPs_v6.docx

Here are updates on the two documents.

The mailer includes your edits, merged with edits from the Administrator.

The Talking points are pretty much just an “accept all” of what you’ve sent, with a few tweaks to shorten.

Please let me know of any last call edits.

Thanks!

Becky Fried

Director of Speechwriting

U.S. Environmental Protection Agency

O: 202.564.0960

Personal Cell/email

fried.becky@epa.gov

From: Drinkard, Andrea

Sent: Wednesday, February 10, 2016 4:23 PM

To: Fried, Becky <Fried.Becky@epa.gov>

Cc: Purchia, Liz <Purchia.Liz@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>; Millett, John <Millett.John@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>

Subject: Edits on the TPs and the Mass Mailer

Hi Becky,

Here are OAR's edits on the TPs and the mass mailer. I'm adding Avi so he can add any input from OGC. If you could send around the final versions, I think folks here would appreciate seeing it again.

Thanks.

-Andrea-

To: Rupp, Mark[Rupp.Mark@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]
Cc: Drinkard, Andrea[Drinkard.Andrea@epa.gov]
From: Stewart, Lori
Sent: Wed 2/10/2016 8:53:53 PM
Subject: RE: CPP Stay Call

Adding in Lorie Schmidt ☺

From: Rupp, Mark
Sent: Wednesday, February 10, 2016 3:51 PM
To: Garbow, Avi <Garbow.Avi@epa.gov>; Stewart, Lori <Stewart.Lori@epa.gov>
Cc: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Subject: FW: CPP Stay Call

Avi and Lori. I'll include you on the calendar. Please feel free to join if you'd like.

From: Rupp, Mark
Sent: Wednesday, February 10, 2016 3:49 PM
Subject: CPP Stay Call

RAs. You'll soon receive a calendar invite from me for 1:30pm(ET) tomorrow to catch up with Janet on the SCOTUS order. (In the event she's emerged from her House hearing, we may be joined by the Administrator, as well.)

If you are not able to join at 1:30, please have your DRA or other surrogate join; and know that Janet just held a call with ADDs.

Mark

Mark W. Rupp

Deputy Associate Administrator for Intergovernmental Relations

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-6074 (O)

Personal Cell/email

To: Garbow, Avi[Garbow.Avi@epa.gov]; Stewart, Lori[Stewart.Lori@epa.gov]
Cc: Drinkard, Andrea[Drinkard.Andrea@epa.gov]
From: Rupp, Mark
Sent: Wed 2/10/2016 8:51:27 PM
Subject: FW: CPP Stay Call

Avi and Lori. I'll include you on the calendar. Please feel free to join if you'd like.

From: Rupp, Mark
Sent: Wednesday, February 10, 2016 3:49 PM
Subject: CPP Stay Call

RAs. You'll soon receive a calendar invite from me for 1:30pm(ET) tomorrow to catch up with Janet on the SCOTUS order. (In the event she's emerged from her House hearing, we may be joined by the Administrator, as well.)

If you are not able to join at 1:30, please have your DRA or other surrogate join; and know that Janet just held a call with ADDs.

Mark

Mark W. Rupp

Deputy Associate Administrator for Intergovernmental Relations

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-6074 (O)

Personal Cell/email

To: Garbow, Avi[Garbow.Avi@epa.gov]
From: Vaught, Laura
Sent: Wed 2/10/2016 2:54:22 PM
Subject: RE: Clean Power Plan

Thanks.

From: Garbow, Avi
Sent: Wednesday, February 10, 2016 8:56 AM
To: Vaught, Laura <Vaught.Laura@epa.gov>
Subject: FW: Clean Power Plan

Below is what I sent to my team last night – and Janet circulated it to her folks as well. Feel free to do the same, or crib as you see fit.

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

From: Garbow, Avi
Sent: Tuesday, February 09, 2016 9:21 PM
To: Schmidt, Lorie (Schmidt.Lorie@epa.gov) <Schmidt.Lorie@epa.gov>; Elliott Zenick <Zenick.Elliott@epa.gov>; Srinivasan, Gautam (Srinivasan.Gautam@epa.gov) <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>
Cc: McCabe, Janet (McCabe.Janet@epa.gov) <McCabe.Janet@epa.gov>
Subject: Clean Power Plan

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Garbow, Avi[Garbow.Avi@epa.gov]
From: Goffman, Joseph
Sent: Wed 2/10/2016 3:00:50 AM
Subject: Fwd: Clean Power Plan

Beautiful note, Avi. Thank you for sharing it with Janet so OAR folks could see it as well. It puts into words what we all feel about you, your team and our mission. We have a lot to be grateful for.

- Joseph Goffman
 Sent from my iPhone

Begin forwarded message:

From: "McCabe, Janet" <McCabe.Janet@epa.gov>
Date: February 9, 2016 at 9:50:03 PM EST
To: "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Niebling, William" <Niebling.William@epa.gov>, "Jordan, Deborah" <Jordan.Deborah@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Wood, Anna" <Wood.Anna@epa.gov>, "Kornylak, Vera S." <Kornylak.Vera@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Harvey, Reid" <Harvey.Reid@epa.gov>, "Adamantiades, Mikhail" <Adamantiades.Mikhail@epa.gov>, "Garbow, Avi" <Garbow.Avi@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Jordan, Scott" <Jordan.Scott@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>, "Shenkman, Ethan" <Shenkman.Ethan@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Stewart, Lori" <Stewart.Lori@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Jones, Toni" <Jones.Toni@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Noonan, Jenny" <Noonan.Jenny@epa.gov>, "Santiago, Juan" <Santiago.Juan@epa.gov>, "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>
Subject: Clean Power Plan

Friends—

As I am sure you have heard by now, the Supreme Court tonight issued a stay of the Clean Power Plan. It is a very short decision, and gives no indication of the Court's reasoning, but does indicate that the decision to issue the stay was 5-4. This is obviously very disappointing, and we are all absorbing it this evening. It is not a decision on the merits, however, and we remain as sure as we were yesterday of the sound legal basis for the rule and that the Clean Power Plan is an important, and lawful, program under the Clean Air Act

to address the serious threat of climate change.

I am asking Emily to send out an invite to a call tomorrow (Wednesday) morning at 10 for the OAR and OGC CPP team to talk about the decision and next steps. Please feel free to include others not on this email. I've attached a couple of items below: the statement the White House put out tonight; the brief following statement EPA put out tonight; and an eloquent note from Avi to his staff, which I heartily endorse.

--Janet

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

February 9, 2016

Statement by the Press Secretary

We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation proceeds. The Clean Power Plan is based on a strong legal and technical foundation, gives States the time and flexibility they need to develop tailored, cost-effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change. We remain confident that we will prevail on the merits. Even while the litigation proceeds, EPA has indicated it will work with states that choose to continue plan development and will prepare the tools those states will need. At the same time, the Administration will continue to take aggressive steps to make forward progress to reduce carbon emissions.

###

EPA STATEMENT:

We're disappointed the rule has been stayed, but you can't stay climate change and you can't stay climate action. Millions of people are demanding we confront the risks posed by climate change. And we will do just that. We believe strongly in this rule and we will continue working with our partners to address carbon pollution.

From: Garbow, Avi

Sent: Tuesday, February 09, 2016 9:21 PM

To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>

Cc: McCabe, Janet <McCabe.Janet@epa.gov>

Subject: Clean Power Plan

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Garbow, Avi[Garbow.Avi@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]
Cc: Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Shenkman, Ethan[Shenkman.Ethan@epa.gov]
From: McCabe, Janet
Sent: Wed 2/10/2016 2:35:08 AM
Subject: RE: Clean Power Plan

Elliott and all—

I will be setting a call for the team (OAR and OGC) at 10 AM tomorrow so we can answer questions and get folks thinking about how to keep the momentum going, as Avi so eloquently has said.

From: Garbow, Avi
Sent: Tuesday, February 09, 2016 9:32 PM
To: Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>
Subject: Re: Clean Power Plan

Yes - please do.

Avi S. Garbow

General Counsel

U.S. Environmental Protection Agency

Sent from my iPhone

On Feb 9, 2016, at 9:31 PM, Zenick, Elliott <Zenick.Elliott@epa.gov> wrote:

Thank you Avi. I assume it is ok to share this with the rest of the team.

Sent from my iPhone

On Feb 9, 2016, at 9:21 PM, Garbow, Avi <Garbow.Avi@epa.gov> wrote:

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Garbow, Avi[Garbow.Avi@epa.gov]
Cc: Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Shenkman, Ethan[Shenkman.Ethan@epa.gov]; McCabe, Janet[McCabe.Janet@epa.gov]
From: Zenick, Elliott
Sent: Wed 2/10/2016 2:31:05 AM
Subject: Re: Clean Power Plan

Thank you Avi. I assume it is ok to share this with the rest of the team.

Sent from my iPhone

On Feb 9, 2016, at 9:21 PM, Garbow, Avi <Garbow.Avi@epa.gov> wrote:

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Spalding, Curt[Spalding.Curt@epa.gov]; Enck, Judith[Enck.Judith@epa.gov]; Garvin, Shawn[garvin.shawn@epa.gov]; McTeerToney, Heather[McTeerToney.Heather@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Curry, Ron[Curry.Ron@epa.gov]; Hague, Mark[Hague.Mark@epa.gov]; McGrath, Shaun[McGrath.Shaun@epa.gov]; Blumenfeld, Jared[BLUMENFELD.JARED@EPA.GOV]; McLerran, Dennis[mclerran.dennis@epa.gov]; Brooks, Karl[brooks.karl@epa.gov]; Beauvais, Joel[Beauvais.Joel@epa.gov]; Stanislaus, Mathy[Stanislaus.Mathy@epa.gov]; Burke, Thomas[Burke.Thomas@epa.gov]; Jones, Jim[Jones.Jim@epa.gov]; Giles-AA, Cynthia[Giles-AA.Cynthia@epa.gov]; Nishida, Jane[Nishida.Jane@epa.gov]; Dunkin, Ann[Dunkin.Ann@epa.gov]
Cc: Rupp, Mark[Rupp.Mark@epa.gov]; Garbow, Avi[Garbow.Avi@epa.gov]; Pieh, Luseni[Pieh.Luseni@epa.gov]
From: Fritz, Matthew
Sent: Wed 2/10/2016 1:42:54 AM
Subject: Clean Power Plan

Good evening everyone,

As you may already know, we received a disappointing decision from the Supreme Court this evening.

The decision stays the implementation of the rule for existing power plants.

I just wanted to make sure you were all aware. Folks are already engaged in conversations about next steps to continue the momentum around climate action.

We will be try to connect in the very near future and share thoughts for going forward.

Thanks.

To: Purchia, Liz[Purchia.Liz@epa.gov]; Niebling, William[Niebling.William@epa.gov]
Cc: Distefano, Nichole[DiStefano.Nichole@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Millett, John[Millett.John@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]
From: Harrison, Melissa
Sent: Mon 3/21/2016 8:26:43 PM
Subject: RE: McConnell letter to states re CPP

Sending now. Thanks everyone!

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Personal Cell/email

Harrison.Melissa@epa.gov

From: Purchia, Liz
Sent: Monday, March 21, 2016 4:25 PM
To: Harrison, Melissa <Harrison.Melissa@epa.gov>; Niebling, William <Niebling.William@epa.gov>
Cc: Distefano, Nichole <DiStefano.Nichole@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Millett, John <Millett.John@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
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From: McCabe, Janet
Sent: Sat 3/19/2016 2:13:12 AM
Subject: CPP stay

You may have seen this blog by Ricky Revesz.

Ex. 5 - Deliberative

•□□□□□□□

March 16, 2016, 07:30 am

Supreme Court ruling on Clean Power Plan doesn't halt EPA action or change timeline

By Richard Revesz, contributor

Last month, the Supreme Court unexpectedly issued a "stay" of the Clean Power Plan, the centerpiece of the Obama administration's efforts to mitigate climate change. This decision unquestionably bars the Environmental Protection Agency (EPA) from enforcing any of the rule's requirements until the lawsuits against it are fully resolved. But opponents claim that the stay requires the EPA to halt *all* work related to the rule. Under their spurious interpretation, the agency could not, for example, provide additional guidance on emissions trading to the many states and power companies that are moving ahead with planning processes for meeting the rule's carbon reduction targets. In fact, there is ample precedent for federal agencies continuing to work on policies stayed by courts.

Opponents also argue that the stay automatically "tolls" all of the Clean Power Plan's compliance deadlines. In other words, they claim that even if the rule is upheld and the stay lifted, all future deadlines will be postponed for at least the amount of time that the stay was in place. This argument, too, is incorrect. The stay order itself says nothing about tolling, and prior practice suggests that if the rule is upheld, it will be up to the D.C. Circuit to decide whether and how to adjust the rule's timeline, which doesn't call for full compliance until 2030.

History shows that a "stay" doesn't stop agency efforts

Before the Supreme Court's decision, the EPA released an initial draft — in a separate docket from the Clean Power Plan itself — of model trading rules for states seeking to use emissions trading systems to meet their carbon reduction targets. (The agency also released a draft federal plan outlining compliance options for states that do not submit their own plans to the EPA.) The agency planned to finalize the model trading rules during the summer of 2016 in order to support local planning efforts, which are continuing in many states (including several that are opposed to the Clean Power Plan). Legal precedent suggests that the EPA has the right to continue this work.

Opponents of the rule have argued to the contrary. The attorneys general of Texas and West Virginia (two of the states leading the challenge to the Clean Power Plan in court) recently claimed that "the States, their agencies, and EPA should put their pencils down." Jeff Holmstead, a former EPA official under President George W. Bush who is representing opponents of the Clean Power Plan, argued that further work by EPA would be the equivalent of "thumbing your nose at the Supreme Court." Sen. [James Inhofe](#) (R-Okla.) [recently made similar comments](#).

But the EPA has taken actions to implement stayed rules under both the Republican and Democratic administrations over a period spanning almost two decades. After the U.S. Court of Appeals for the D.C. Circuit issued a stay on the EPA's Cross-State Air Pollution Rule in 2011, the agency continued work on the rule by adjusting state emissions budgets and resolving issues related to modeling. At the time, the EPA argued that its action "is consistent with and is unaffected by the Court's Order staying the [rule]."

In 2003, under the George W. Bush administration, the EPA also declined to "put its pencil down" when faced with a stay of its rule adding an equipment replacement provision to the Clean Air Act's New Source Review program. Indeed, while the stay was in place, the agency solicited public comments on multiple issues related to the rule. (Holmstead was the EPA's assistant administrator for air and radiation at that time.)

During the Clinton administration in 1999, the D.C. Circuit stayed the NOx SIP (Nitrogen Oxides State Implementation Plan) Call, a rule limiting nitrogen oxides emissions affecting downwind states. While the stay was in place, the agency pursued a related regulation, but gave states the option to voluntarily comply with the stayed rule instead.

Recent claims that the EPA must halt all work on the Clean Power Plan would be persuasive if the court had granted an injunction rather than a stay. The nature of these remedies is very different, but the opponents of the Clean Power Plan treat them as if they were equivalent. As Chief Justice John Roberts wrote in the majority opinion in *Nken v. Holder* (2009), a stay "halt[s] or postpon[es] some portion of the proceeding, or ... temporarily divest[s] an order of enforceability," whereas an injunction "directs the conduct of a party, and does so with the backing of [a court's] full coercive powers." In short, an injunction is a binding restriction on the *conduct of the agency*. A stay holds much less power, focusing only on the *enforceability of the rule*.

What happens to compliance deadlines?

The EPA's opponents have argued that the stay automatically delays, or "tolls" all Clean Power Plan deadlines, even though the Supreme Court made no mention of such tolling.

The U.S. Chamber of Commerce recently posted a white paper on its website arguing that, if the Clean Power Plan is upheld by the courts, the "EPA is required to move all the Rule's deadlines into the future by at least the amount of time between the Stay's issuance and its expiration." Inhofe echoed this claim and wrote to the EPA administrator asking her to make clear that such tolling would take place.

Here, again, these claims fly in the face of precedent. Indeed, none of the cases cited in the Chamber of Commerce's white paper support this tolling position. Decisions of this sort are made after a stay is lifted, as was the case for both the NOx SIP Call and the Cross-State Air Pollution Rule. Consistent with the proper reading of prior precedent, if the Supreme Court upholds the rule, or declines to hear the case after the D.C. Circuit upholds it, the D.C. Circuit will decide what to do about the various deadlines. That is not a decision that the Supreme Court made when it granted the stay, and it is ultimately a matter to be decided by the federal courts, not the EPA.

The D.C. Circuit will eventually have wide discretion on what to do about the deadlines, and there are likely to be competing arguments. For example, the general counsel for the National Association of Regulatory Utility Commissioners suggested that "[t]he deadlines that are further out — the 2030 and 2022 deadlines — may change less than the nearer-term ones" after the stay is lifted. Given the extensive lead time and compliance flexibility already built into the Clean Power Plan, and various market forces and policies that are continuing to drive emissions reductions in the power sector, the judges may well decide that revisions to the Clean Power Plan's later deadlines are not justified.

While the stay is in effect, the EPA cannot impose Clean Power Plan requirements on any state that does not voluntarily act. But nothing bars the agency from continuing to develop guidance on emissions trading. Finalizing the model trading rules would both support states that want to move forward with their planning now and speed up the implementation process if the courts ultimately uphold the Clean Power Plan, thereby avoiding unnecessary delays that would further compromise our well-being. Providing interested states and regulated entities with tools to aid their planning is the responsible thing for the EPA to do.

Revesz is dean emeritus and Lawrence King Professor of Law at New York University School of Law, and director of the Institute for Policy Integrity. He is the co-author, with Jack Lienke, of the new book "Struggling for Air: Power Plants and the War on Coal."

1. **In the event that the CPP is upheld, will EPA abide by the tolling requirements inherent in the Supreme Court's stay decision, thereby extending all compliance dates by the number of days between the CPP's October 18, 2015 federal register publication date and the eventual lifting of the stay by the Supreme Court?**

- a. **If so, will EPA commit to provide all states proper notification?**

As long as the Supreme Court's stay order is in effect, EPA cannot enforce any CPP deadlines. That is absolutely clear, and we are abiding by that order.

We believe that ultimately the Court will approve the CPP and lift the stay, and the CPP will go into effect. It is premature to speculate now as to what that will mean for submittal and compliance dates.

When prior stays were lifted for Clean Air Act power plant rules, the effect of the stays on compliance deadlines were decided by the courts.

Given how closely states are following the litigation – most of them are involved in it – I have no doubt that states will be notified of the CPP submittal and compliance dates after the stay is lifted.

Ex. 5 - Deliberative

2. **Describe clearly and in detail what CPP planning efforts continue and what work has been halted by the EPA, including:**

- a. **Those related to finalizing the proposed CPP model federal plan;**
- b. **Those related to the proposed Clean Energy Incentive Program;**
- c. **Those related to proposed guidance on the rule's evaluation, measurement and verification requirements; and**
- d. **Those related to review of state plans or requests for extension that may be submitted to EPA during the stay.**

Although the Supreme Court has stayed the CPP rule, the stay does not preclude all continued work on the CPP and does not limit states that want to proceed with planning efforts or other actions to reduce greenhouse gas emissions from power plants.

During the stay, EPA will continue to assist states that voluntarily decide to move forward, helping to pave the way for plans that will involve innovative approaches and flexibility for achieving solutions.

We will continue to be available to states and provide the tools and support for the states that choose to continue to work to cut carbon pollution from power plants.

In particular, some states have requested that we issue the model state rules and further CEIP details, and we are moving forward with them.

Ex. 5 - Deliberative

During the stay, we will not be approving state plans or requests for extensions of time.

3. **How much funding is currently being allocated to CPP implementation-related activities and how many full-time equivalents (FTEs) are working on these activities? How does this current resource allocation compare to allocations prior to the stay, and how does the Agency plan to adjust projected fiscal year 2017 funding and activities in light of the stay?**

Ex. 5 - Deliberative

WHAT OAR HAS SUBMITTED FOR BUDGET HEARING PREPARATION:

Q. Why does EPA think it can “move forward” on CPP during the stay? What types of CPP activities is the EPA spending money on?

A. The stay on the Clean Power Plan does not also stay the impacts of climate change. Regulating carbon emissions from power plants is part of the Agency’s obligations under key provisions of the Clean Air Act. The EPA expects to continue to use Agency funds to protect human health and the environment consistent with its authority under the Act. The FY 2017 budget prioritizes actions to reduce the impacts of climate change, one of the most significant challenges for this and future generations, and supports the President’s Climate Action Plan. The EPA’s Clean Power Plan, which establishes carbon pollution reduction standards for existing power plants, is a top priority for the EPA and builds upon existing innovation and economic growth while supporting a clean energy economy. Although the Supreme Court has stayed the CPP rule, the stay does not preclude all continued work on the CPP and does not limit states that want to proceed with planning efforts or other actions to reduce greenhouse gas emissions from power plants. During the stay, EPA will continue to assist states that voluntarily decide to move forward, helping to pave the way for plans that will involve innovative approaches and flexibility for achieving solutions. We will continue to be available to states and provide the tools and support for the states that choose to continue to work to cut carbon pollution from power plants.

Q. What about the money distributed this week to EPA Regional Offices for Clean Power Plan work?

A. This week, an additional \$36,000 was distributed to the EPA Regional offices to support stakeholder and state activities related to the Clean Power Plan. The intention is to use this money consistent with the stay. As such, Regions expect to be using it, for example, to continue to respond to stakeholder and state invitations to speak or participate at meetings; to provide information regarding energy efficiency and renewable energy projects that could help reduce carbon emissions; and to otherwise be responsive to stakeholder and state questions and requests regarding reducing carbon emissions from power plants. The Regions are not going to be using this to affirmatively move forward with “implementation” activities but rather, to be responsive to state and stakeholder needs and requests.

From: Rupp, Mark

Sent: Wednesday, February 10, 2016 3:49 PM

To: Regional Administrators <Regional_Administrators@epa.gov>

Cc: RA Assistants <RA_Assistants@epa.gov>; Fritz, Matthew <Fritz.Matthew@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; DRA <DRA@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Browne, Cynthia <Browne.Cynthia@epa.gov>; AO-ORO <AOORO@epa.gov>; Herckis, Arian <Herckis.Arian@epa.gov>

Subject: CPP Stay Call

RAs. You'll soon receive a calendar invite from me for 1:30pm(ET) tomorrow to catch up with Janet on the SCOTUS order. (In the event she's emerged from her House hearing, we may be joined by the Administrator, as well.)

If you are not able to join at 1:30, please have your DRA or other surrogate join; and know that Janet just held a call with ADDs.

Mark

Mark W. Rupp

Deputy Associate Administrator for Intergovernmental Relations

Office of Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

(202) 564-6074 (O)

Personal Cell/email

To: Kyle Danish[kwd@vnf.com]
Cc: Sublett, Stacey[Sublett.Stacey@epa.gov]
From: Garbow, Avi
Sent: Fri 2/12/2016 3:07:48 PM
Subject: RE: Google / Amicus Brief

Kyle,

One other related matter to mention. In early March, I plan to be in San Francisco for some meetings at our Regional office and elsewhere. While there, I am looking into a possible visit to Google HQ. My primary interest in doing so relates to Google's work in the area of environmental information, and providing new ways for folks to access and disseminate data and other environmental information. I have copied Stacey Sublett, who is in OGC's Front Office, and is helping to plan my West Coast trip. I think we had aimed to reach out to Rachel Brandt, who is key player at Google re: sustainability.

Certainly, to the extent we pull together such a visit, I would be happy to also meet with others at Google who are involved in the Clean Power Plan litigation. Give some thought to whether that might be of interest to your client. I think the date we are looking at for my possible visit to Silicon Valley is March 3rd. If you have any suggestions, please let Stacey or me know.

Thanks again.

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

From: Kyle Danish [mailto:kwd@vnf.com]

Sent: Friday, February 12, 2016 9:56 AM
To: Garbow, Avi <Garbow.Avi@epa.gov>
Subject: Google / Amicus Brief

Dear Avi:

I hope you are doing well.

As you may recall, we've been providing counsel to Google on the CPP litigation – including assisting them in preparing a declaration in support of the opposition to the stay motions in the DC Circuit.

Google is now interested in submitting an amicus brief if they can recruit some other companies that are also major purchasers of clean energy. They are in the process of doing that outreach now.

I would appreciate the opportunity to talk with you or others on your team about what would be a useful amicus brief from such a group of companies.

I'm traveling today but I will be checking my email and voicemail.

Many thanks

Kyle

Kyle W. Danish

Van Ness Feldman LLP

1050 Thomas Jefferson St., N.W.

Washington, D.C. 20007-3877

Ph: (202) 298-1876

Fx: (202) 338-2416

Cell: (202) 361-5621

email: kwd@vnf.com

Learn more about Van Ness Feldman by visiting www.vnf.com

To: Kyle Danish[kwd@vnf.com]
Cc: Schmidt, Lorie (Schmidt.Lorie@epa.gov)[Schmidt.Lorie@epa.gov]; Elliott Zenick[Zenick.Elliott@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]
From: Garbow, Avi
Sent: Fri 2/12/2016 2:59:16 PM
Subject: RE: Google / Amicus Brief

Thanks, Kyle. Very much appreciate you reaching out on behalf of your client. I am going to copy on this email Lorie Schmidt, Elliott Zenick, and Howard Hoffman – who are the key players in OGC working on the briefing - and ask that one of them reach out to you to set up a call soon.

Regards,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

From: Kyle Danish [mailto:kwd@vnf.com]
Sent: Friday, February 12, 2016 9:56 AM
To: Garbow, Avi <Garbow.Avi@epa.gov>
Subject: Google / Amicus Brief

Dear Avi:

I hope you are doing well.

As you may recall, we've been providing counsel to Google on the CPP litigation – including assisting them in preparing a declaration in support of the opposition to the stay motions in the DC Circuit.

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I would appreciate the opportunity to talk with you or others on your team about what would be a useful amicus brief from such a group of companies.

I'm traveling today but I will be checking my email and voicemail.

Many thanks

Kyle

Kyle W. Danish

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Washington, D.C. 20007-3877

Ph: (202) 298-1876

Fx: (202) 338-2416

Cell: (202) 361-5621

email: kwd@vnf.com

Learn more about Van Ness Feldman by visiting www.vnf.com

To: Vaught, Laura (Vaught.Laura@epa.gov)[Vaught.Laura@epa.gov]
From: Garbow, Avi
Sent: Wed 2/10/2016 1:55:55 PM
Subject: FW: Clean Power Plan

Below is what I sent to my team last night – and Janet circulated it to her folks as well. Feel free to do the same, or crib as you see fit.

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

From: Garbow, Avi
Sent: Tuesday, February 09, 2016 9:21 PM
To: Schmidt, Lorie (Schmidt.Lorie@epa.gov) <Schmidt.Lorie@epa.gov>; Elliott Zenick <Zenick.Elliott@epa.gov>; Srinivasan, Gautam (Srinivasan.Gautam@epa.gov) <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>
Cc: McCabe, Janet (McCabe.Janet@epa.gov) <McCabe.Janet@epa.gov>
Subject: Clean Power Plan

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Goffman, Joseph[Goffman.Joseph@epa.gov]
From: Stewart, Lori
Sent: Fri 3/11/2016 2:07:24 PM
Subject: Fwd: Bi-weekly CPP Meeting

Sent from my iPhone

Begin forwarded message:

From: "Koerber, Mike" <Koerber.Mike@epa.gov>
Date: March 11, 2016 at 8:52:33 AM EST
To: "Atkinson, Emily" <Atkinson.Emily@epa.gov>
Cc: "Stewart, Lori" <Stewart.Lori@epa.gov>, "South, Peter" <South.Peter@epa.gov>
Subject: RE: Bi-weekly CPP Meeting

Emily – In light of the stay of the rule, we think that these bi-weekly meetings can be dropped from Janet's calendar. We will continue to have the weekly check-ins. Let me know if this is okay.
 Thanks.

Mike

-----Original Appointment-----

From: McCabe, Janet
Sent: Thursday, December 03, 2015 4:34 PM
To: McCabe, Janet; Goffman, Joseph; Niebling, William; Jordan, Deborah; Page, Steve; Koerber, Mike; Wood, Anna; Tsirigotis, Peter; Culligan, Kevin; Santiago, Juan; Bracht, Megan; Kornylak, Vera S.; Noonan, Jenny; Dunham, Sarah; Harvey, Reid; Schmidt, Lorie; Zenick, Elliott; Sanders, Maria; Walker, Jean; Heilig, Johnetta; Alston, Lala; Stenhouse, Jeb; Adamantiades, Mikhail; Rosenberg, Julie; Miller, Julia; Drinkard, Andrea; Snyder, Carolyn; Banister, Beverly
Cc: Cortelyou-Lee, Jan
Subject: Bi-weekly CPP Meeting
When: Wednesday, March 16, 2016 10:00 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: WJC-N 5400 + Video with RTP **Conf Code**

To: Goffman, Joseph; Niebling, William; Jordan, Deborah; Page, Steve; Koerber, Mike; Wood, Anna; Tsirigotis, Peter; Culligan, Kevin; Santiago, Juan; Bracht, Megan; Kornylak, Vera S.; Noonan, Jenny; Dunham, Sarah; Harvey, Reid; Schmidt, Lorie; Zenick, Elliott; Sanders, Maria; Walker, Jean; Heilig, Johnetta; Alston, Lala; Stenhouse, Jeb; Adamantiades, Mikhail; Rosenberg, Julie; Miller, Julia; Drinkard, Andrea; Snyder, Carolyn; Banister, Beverly; Snyder, Carolyn
Cc: Cortelyou-Lee, Jan

To: Atkinson, Emily[Atkinson.Emily@epa.gov]
Cc: Goffman, Joseph[Goffman.Joseph@epa.gov]
From: Stewart, Lori
Sent: Fri 3/11/2016 2:07:05 PM
Subject: Re: Bi-weekly CPP Meeting

Adding in Joe. I hadn't heard these would be coming off the calendar.

Sent from my iPhone

On Mar 11, 2016, at 9:05 AM, Atkinson, Emily <Atkinson.Emily@epa.gov> wrote:

Mike Koerber is now asking for these meetings to be cancelled – earlier this week you and I had talked about having these on indefinitely. Should I ask Janet about this now?

From: Koerber, Mike
Sent: Friday, March 11, 2016 8:53 AM
To: Atkinson, Emily <Atkinson.Emily@epa.gov>
Cc: Stewart, Lori <Stewart.Lori@epa.gov>; South, Peter <South.Peter@epa.gov>
Subject: RE: Bi-weekly CPP Meeting

Emily – In light of the stay of the rule, we think that these bi-weekly meetings can be dropped from Janet's calendar. We will continue to have the weekly check-ins. Let me know if this is okay.
 Thanks.

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To: Goffman, Joseph; Niebling, William; Jordan, Deborah; Page, Steve; Koerber, Mike; Wood, Anna; Tsirigotis, Peter; Culligan, Kevin; Santiago, Juan; Bracht, Megan; Kornylak, Vera S.; Noonan, Jenny; Dunham, Sarah; Harvey, Reid; Schmidt, Lorie; Zenick, Elliott; Sanders, Maria; Walker, Jean; Heilig, Johnetta; Alston, Lala; Stenhouse, Jeb; Adamantiades, Mikhail; Rosenberg, Julie; Miller, Julia; Drinkard, Andrea; Snyder, Carolyn; Banister, Beverly; Snyder, Carolyn

Cc: Cortelyou-Lee, Jan

To: Jody Freeman[freeman@law.harvard.edu]; Goffman, Joseph[Goffman.Joseph@epa.gov]
From: Michael H. Levin
Sent: Tue 3/1/2016 4:41:02 PM
Subject: RE: CPP stay

OK, so it appears the best prudential route is a cert petition to dissolve (or narrow) the stay following a C ADC decision. That petition presumably could be filed whether or not the CPP is affirmed in whole or in part by the CADC. Not clear to me that with the case in such a posture, even though the CADC can't itself dissolve the stay, a 4-4 S Ct result following an actual cert petition, scoping questions & full briefing wouldn't have that effect – especially if the CADC merits result also addresses the lack of basis for a continued stay. Given the total lack of expressed rationale & the avalanche of early-stay requests that already has started with MATS, it's also conceivable that at least one vote could be peeled away.

Lisa's draft article indicates in breathtaking detail how radical & lacking basis the stay action really is. Thx for that.

Ugh.

Mike

From: Jody Freeman [mailto:freeman@law.harvard.edu]
Sent: Tuesday, March 01, 2016 10:16 AM
To: Goffman, Joseph
Cc: Michael H. Levin
Subject: Re: CPP stay

My understanding is that a motion to dissolve the stay could be filed anytime (although now it is too soon especially in the swirl of Justice Scalia's passing) but certainly plausible after a DC Circuit decision upholding the rule. And Supreme Court experts seem to believe dissolution would require a majority vote whether 5-4 or 4-3. What DOJ would think of this strategy and best timing I do not know, but presumably in this administration would not oppose. Perhaps I do not know all rules of protocol though.

Jody

On Mar 1, 2016, at 7:09 AM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Reconsideration of SCOTUS stay? 4-4 leaves in place. Not sure how to get SCOTUS to reconsider DC Circuit denial.

From: Michael H. Levin [<mailto:mhlevin@mhllawgrp.com>]
Sent: Tuesday, March 01, 2016 7:58 AM
To: Freeman, Jody 2 <freeman@law.harvard.edu>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: CPP stay
Importance: High

Has anyone looked at petitioning the Supremes to reconsider the stay? Woke up this AM with this thought & haven't checked the S.Ct rules or precedents, but it occurred to me there may be an opening here if the SG doesn't block it as a matter of courtesy & Court protocol.

Does a 4-4 result on reconsideration supersede a prior 5-4 vote & leave the DC Circuit's denial standing? Are there additional disruption factors that further distinguish this from *Michigan*?

Just thinking.

Mike

To: Goffman, Joseph[Goffman.Joseph@epa.gov]
Cc: mhlevin@mhllawgrp.com[mhlevin@mhllawgrp.com]
From: Jody Freeman
Sent: Tue 3/1/2016 3:16:28 PM
Subject: Re: CPP stay

My understanding is that a motion to dissolve the stay could be filed anytime (although now it is too soon especially in the swirl of Justice Scalia's passing) but certainly plausible after a DC Circuit decision upholding the rule. And Supreme Court experts seem to believe dissolution would require a majority vote whether 5-4 or 4-3. What DOJ would think of this strategy and best timing I do not know, but presumably in this administration would not oppose. Perhaps I do not know all rules of protocol though.

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Sent: Tuesday, March 01, 2016 7:58 AM
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Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
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Just thinking.

Mike

To: Freeman, Jody 2[freeman@law.harvard.edu]
Cc: Goffman, Joseph[Goffman.Joseph@epa.gov]
From: Michael H. Levin
Sent: Tue 3/1/2016 12:58:21 PM
Subject: CPP stay

Has anyone looked at petitioning the Supremes to reconsider the stay? Woke up this AM with this thought & haven't checked the S.Ct rules or precedents, but it occurred to me there may be an opening here if the SG doesn't block it as a matter of courtesy & Court protocol.

Does a 4-4 result on reconsideration supersede a prior 5-4 vote & leave the DC Circuit's denial standing? Are there additional disruption factors that further distinguish this from *Michigan*?

Just thinking.

Mike

TPs for Acting Deputy Administrator Stan Meiburg

IOGCC // March 1, 2016

- As we wrap up Day 1, I want to reiterate some of the key themes we've heard.
- One, we appreciate the work states are doing, and we're glad to be working with you.

Not Responsive

- And as Joe mentioned, we are certainly disappointed that the Supreme Court stayed the Clean Power Plan. And of course we respect the Court's decision. We are confident the rule will be upheld on the merits.
- And in the meantime, the stay does not slow our nation's transition to a low-carbon economy. The U.S. slashed more carbon pollution than any other nation on Earth before the CPP, and the unprecedented Paris Agreement sends a clear market signal about where the world is heading. We expect those trends to continue.

Not Responsive

Not Responsive

- Thank you again for being here, and we'll see you tomorrow.

To: Stewart, Lori[Stewart.Lori@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]; Shaw, Betsy[Shaw.Betsy@epa.gov]; Jordan, Deborah[Jordan.Deborah@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Page, Steve[Page.Steve@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Grundler, Christopher[grundler.christopher@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; DeMocker, Jim[DeMocker.Jim@epa.gov]; Salgado, Omayra[Salgado.Omayra@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]
From: McCabe, Janet
Sent: Wed 2/17/2016 5:01:22 AM
Subject: RE: Notes from the Administrator's Senior Staff meeting

Not Responsive

From: Stewart, Lori
Sent: Tuesday, February 16, 2016 2:17 PM
To: McCabe, Janet <McCabe.Janet@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; DeMocker, Jim <DeMocker.Jim@epa.gov>; Salgado, Omayra <Salgado.Omayra@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Subject: Notes from the Administrator's Senior Staff meeting

Not Responsive

Region 4 reported that most of their states have paused their CPP efforts as a result of the stay.

Not Responsive

To: McCabe, Janet[McCabe.Janet@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]; Shaw, Betsy[Shaw.Betsy@epa.gov]; Jordan, Deborah[Jordan.Deborah@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Page, Steve[Page.Steve@epa.gov]; Koerber, Mike[Koerber.Mike@epa.gov]; Grundler, Christopher[grundler.christopher@epa.gov]; Dunham, Sarah[Dunham.Sarah@epa.gov]; Flynn, Mike[Flynn.Mike@epa.gov]; DeMocker, Jim[DeMocker.Jim@epa.gov]; Salgado, Omayra[Salgado.Omayra@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]
From: Stewart, Lori
Sent: Tue 2/16/2016 7:17:25 PM
Subject: Notes from the Administrator's Senior Staff meeting

Not Responsive

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Not Responsive

Not Responsive

To: McCabe, Janet[McCabe.Janet@epa.gov]
Cc: Goffman, Joseph[Goffman.Joseph@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]; Noonan, Jenny[Noonan.Jenny@epa.gov]; Miller, Julia[Miller.Julia@epa.gov]; Harvey, Reid[Harvey.Reid@epa.gov]; Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Kornylak, Vera S.[Kornylak.Vera@epa.gov]; Fraser, Scott[Fraser.Scott@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]
From: Drinkard, Andrea
Sent: Tue 2/16/2016 1:38:20 PM
Subject: Re: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Ex. 6 - Personal Privacy

Scott Fraser will be on point to run the leader view for the call. Let us know if there's anything you need.

Andrea Drinkard
 (o) 202.564.1601

Personal Cell/email

On Feb 16, 2016, at 5:34 AM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:

Thanks Andrea.

As you noted, these questions are pretty much what we expected.

I assume/hope OGC will join us for the call with the states.

Sent from my iPhone

On Feb 15, 2016, at 8:43 PM, Drinkard, Andrea <Drinkard.Andrea@epa.gov> wrote:

Email 2 of 2.

Andrea Drinkard
 (o) 202.564.1601

Personal Cell/email

Begin forwarded message:

From: "Miller, Julia" <Miller.Julia@epa.gov>
Date: February 15, 2016 at 3:06:53 PM EST
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>, "Lemon, Mollie" <Lemon.Mollie@epa.gov>, "Torres, Elineth" <Torres.Elineth@epa.gov>

Subject: Fwd: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

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Begin forwarded message:

From: Clint Woods <cwoods@csg.org>
Date: February 15, 2016 at 2:17:39 PM EST
To: "Miller, Julia" <Miller.Julia@epa.gov>
Subject: RE: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

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Clint Woods

Executive Director

Association of Air Pollution Control Agencies

2760 Research Park Dr.

Lexington, KY 40511

859.244.8040 – office

cwoods@csg.org

<http://www.cleanairact.org>

<image003.jpg>

From: Miller, Julia [<mailto:Miller.Julia@epa.gov>]

Sent: Friday, February 12, 2016 3:50 PM

To: Phil Assmus (passmus@4cleanair.org); Clint Woods; Miles Keogh; Jennifer Murphy; D Terry

Cc: Drinkard, Andrea; Rosenberg, Julie; Mitchell, Ken; Millett, John; Rupp, Mark; Noonan, Jenny; Wortman, Eric; Kornylak, Vera S.; Wood, Anna

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Date: February 16, 2016

Time: 1:00pm Eastern

Call-in: (877) 290-8017; conference ID 52665151

Please dial in 10 minutes before your call's start time to ensure your participation.

We look forward to your participation. Information about the Clean Power Plan can be found on our website:

www.epa.gov/cleanpowerplan

To: Drinkard, Andrea[Drinkard.Andrea@epa.gov]
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From: McCabe, Janet
Sent: Tue 2/16/2016 10:34:06 AM
Subject: Re: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

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From: Drinkard, Andrea
Sent: Tue 2/16/2016 1:43:33 AM
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ASSOCIATION OF AIR POLLUTION CONTROL AGENCIES

2016 SPRING MEETING

April 28–29 | Columbia Marriott | Columbia, South Carolina | www.cleanairact.org

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Cc: Noonan, Jenny[Noonan.Jenny@epa.gov]; Miller, Julia[Miller.Julia@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]
From: Drinkard, Andrea
Sent: Tue 2/16/2016 1:42:31 AM
Subject: Fwd: Questions for Tomorrow

Hi Janet and Joe,

Here is the first of two emails with the top qs from the states. I wanted to get these to you tonight, but we'll pull answers in the am.

Most of these, except the last one, are in line with what we thought would be coming into us.

Let me know if there are any in particular you'd like us and ogc to focus on.

Andrea Drinkard

(o) 202.564.1601

Personal Cell/email

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From: "Miller, Julia" <Miller.Julia@epa.gov>
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To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>, "Lemon, Mollie" <Lemon.Mollie@epa.gov>, "Torres, Elineth" <Torres.Elineth@epa.gov>
Subject: Fwd: Questions for Tomorrow

Here are the Qs from NACAA.

Begin forwarded message:

From: Phillip Assmus <passmus@4cleanair.org>
Date: February 15, 2016 at 4:16:17 PM EST
To: "Miller, Julia" <Miller.Julia@epa.gov>
Subject: Questions for Tomorrow

Julia,

I've gotten some state questions in anticipation of tomorrow's CPP call and have collected them below for your review. None should be too surprising. I hope they are a useful guide to help your team to prepare.

Phil

1. Are states under any obligation to make initial plan submittals, state plan submittals or any other other filings before the stay is lifted?
2. How will EPA revise the applicable submittal deadlines once the stay is lifted? To help illustrate, can EPA review the process and standards it applied to adjust the implementation deadlines for CSAPR? Are there other helpful examples states should review?
3. What CPP rulemakings and guidance remain outstanding (e.g., the model federal trading rules, the CEIP future notice and comment opportunity and EM&V guidance)? For each, how does the stay affect their development, public opportunity for comment and finalization timing?
4. To what extent can EPA continue to work with the states that elect to move forward on CPP implementation? What does EPA believe the limits of its authority are?
5. How should states contact EPA to seek assistance with CPP implementation? Does EPA need a written request?
6. Does EPA have authority to accept or review voluntary state submissions during the stay? If so, what kind of voluntary submissions would be appropriate?

7. How will voluntary state implementation actions taken during the stay be viewed for achieving compliance? For example, if the legal challenge is not resolved until 2018, and utilities take measures to comply between 2016 and 2018, will those measures still count toward compliance?

8. Does the recent Supreme Court vacancy call the stay into question or present EPA with an opportunity to challenge it?

To: Goffman, Joseph[Goffman.Joseph@epa.gov]
Cc: Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]
From: Hoffman, Howard
Sent: Mon 2/15/2016 2:23:13 PM
Subject: CPP -- post-stay positive statements from power companies and states
[Power companies - positive statements.docx](#)
[States - positive statements.docx](#)

FYI: Here are compilations of positive statements from power companies and states collected by NGOs following the Supreme Court stay of the CPP.

Howard J. Hoffman USEPA-OGC-ARLO (202) 564-5582(O) Personal Cell/email Room 7415
WJC-North

Mailing address: Mail Code 7344A, 1200 Pennsylvania Ave. NW Washington, D.C. 20460

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

From: Vickie Patton [mailto:vpatton@edf.org]
Sent: Monday, February 15, 2016 8:21 AM
To: Hoffman, Howard <hoffman.howard@epa.gov>
Subject: Power Companies and States

Dear Mr. Hoffman, Please see attached statements by power companies and states. Sincerely yours, Vickie Patton

#####

POWER COMPANIES

Ameren Corporation

“**Ameren Corp.** is already making the transition to a cleaner and more diverse generation portfolio in a responsible manner,” Ajay Arora, Ameren's vice president of environmental services and generation resource planning, said in a statement.

American Electric Power

For American Electric Power, an electricity provider and one of the country’s top coal users, the court case “doesn’t change our focus on the diversification of our generation fleet,” said spokeswoman Melissa McHenry. Those diversification plans include more natural gas and renewables,” she said.

Calpine Corporation

Calpine Corp. spokesman Brett Kerr said the move wasn't something the market actually anticipated. "We'll continue to be supportive of the Clean Power Plan," he said, pointing to a "natural evolution of the market anyway" away from less efficient coal plants. "So it won't really dictate us to change our strategy too much, which is to focus on being the premier operator of gas-fired plants in the United States." He said it's not in anybody's interest to have a federal implementation plan that dictates compliance for Texas.

Dominion Power

Dominion spokesman David Botkins, said "We will work constructively with the Commonwealth and other stakeholders on a compliance plan that has our customers as the first priority, ensures reliability, and maintains a diverse mix of electric generation."

DTE

“Despite being surprised by the U.S. Supreme Court's Feb. 9 decision to stay the Clean Power Plan, DTE Energy Co. Chairman and CEO Gerry Anderson said in a Feb. 10 earnings call that he does not expect much to change in the short term for the company's DTE Electric Co. utility, which serves 2.1 million customers in southeastern Michigan... Anderson said the company is going full steam ahead on the investments to replace retiring plants, even with the stay of the EPA's Clean Power Plan. ‘There might be people who don't like the Clean Power Plan and say ‘slow down, stop,’ but [state Sen.] Mike Nofs won't be one of them, and neither will we,’ he said. Nofs is the primary advocate for the comprehensive energy reform in the state Legislature.”

Edison Electric Institute

“Electric utilities are investing in clean energy and pursuing energy efficiency,” Tom Kuhn, president of the Edison Electric Institute, the largest trade association of electricity providers, told a gathering of Wall Street investors less than a day after the Supreme Court announced its stay on the Clean Power Plan.

Exelon

Exelon Corp., the nation's largest nuclear operator, said, "Regardless of this procedural development, the Supreme Court already has ruled that carbon is a pollutant the EPA must regulate. Our customers want reliable, clean and affordable electricity, and Exelon remains committed to helping drive the national transition to a low-carbon future."

FirstEnergy

FirstEnergy Corp. spokesman Todd Schneider: "While the legal challenges are addressed, we will work with our states if they chose to continue development of their compliance plans."

Great River Energy

Lancaster noted that Great River was not among the utilities challenging the CPP because it believed the rule is consistent with earlier Supreme Court rulings on EPA's standing to regulate carbon dioxide under the Clean Air Act. "It was not our point of view that the rulemaking was contrary to existing law, so we were a little surprised," he said.

National Grid

"Despite the Supreme Court's decision, National Grid still strongly supports EPA's Clean Power Plan," said Dean Seavers, president of National Grid, U.S. "We stand by our belief that the CPP is not only reasonable and achievable, but imperative to meeting the nation's greenhouse gas reduction commitment established at COP21."

"As we continue to stress with our customers and industry partners, tomorrow's power grid and energy supply chain must look different than today's," Seavers went on to say. "Climate change is a global imperative, and we must find ways to transition our energy industry into a decarbonized future. That means every player—including system operators, generators, distributors, and policy makers—must collaborate at a level our country has never seen before."

PacifiCorp

"We're still going to continue to look to ways to cost-effectively expand our commitment to renewable resources," said Ry Schwark, a spokesman for PacifiCorp, which... intends to "continue to work with states as they develop their plans."

PNM Resources

Pahl Shipley, director of corporate communications at New Mexico-based **PNM Resources Inc.**,

said the stay doesn't affect the company's plan to lower the use of coal significantly by retiring two units at the San Juan Generating Station. "We'll monitor developments and continue to work with the state, but regardless of the outcome the company is moving forward to cut carbon emissions and add cleaner resources to our portfolio, including solar and natural gas," Shipley said.

PG&E

Pacific Gas and Electric Co. said it was "disappointed" by the ruling. "We believe EPA has ample legal authority to pursue the Clean Power Plan," said Vice President of Federal Affairs and Policy Melissa Lavinson, calling EPA's rule "measured and reasonable." "PG&E will continue to support the Clean Power Plan and will move forward with the many steps we are taking to support California's commitments to reduce greenhouse gases."

PSEG

PSEG "firmly believes that carbon emissions need to be reduced. We do believe that climate change is a serious issue; all the science points to that. It is real, and action needs to be taken; it's not going to wait for us to get our legal or political act together."

Rocky Mountain Power

"We've communicated pretty clear in recent years that we believe the transition away from coal is going to happen," said Dave Eskelsen, a spokesman for Rocky Mountain Power, Wyoming's largest utility.

Southern California Edison

Southern California Edison expressed disappointment in the court's ruling but added that "SCE supports the Clean Power Plan and will maintain an active role in supporting California's efforts to reduce greenhouse gas emissions, including support for renewable energy, transportation electrification, energy efficiency and innovative, clean energy technologies."

Xcel Energy

"While the Supreme Court's ruling is a significant development in this case, the merits of the case have not been decided and the legal proceedings will continue," Minneapolis-based Xcel Energy Inc. said in a prepared statement.

Regardless of the final outcome, Xcel said it will continue to work with states and stakeholders on plans "to create sustainable and affordable energy futures."

"This approach will not only ensure compliance with existing and new regulations, but also take advantage of new technologies, recognize evolving customer needs and continue to drive improvements in how we produce and deliver energy," the Fortune 500 utility said.

STATES

-

- **Arizona**

- Eric Massey of Arizona Department of Environmental Quality quote: "...the state will continue gathering information while the court considers the Clean Power Plan. By March the division is expecting to complete a baseline outlook for 15 years of carbon emissions given impending changes including APS fuel conversions, growth in renewable energy and energy efficiency."

- **California**

- Governor Brown statement:

- "As the world gets hotter and closer to irreversible climate change, these justices appear tone-deaf as they fiddle with procedural niceties. This arbitrary roadblock does incalculable damage and undermines America's climate leadership. But make no mistake, this won't stop California

from continuing to do its part under the Clean Power Plan.”

○ Attorney General Kamala Harris statement:

“I am extremely disappointed by the Supreme Court’s decision today to block President Obama’s Clean Power Plan,” said Attorney General Harris. “The Court’s decision, and the special interests working to undermine this plan, threatens our environment, public health and economy.”

▪ LA Mayor Eric Garcetti ([via Twitter](#)): "Climate change is the most critical threat of our time. It is already warming the earth, raising our sea levels, and affecting our food supply - and it is our responsibility to stop it. Last year, Los Angeles made a firm commitment in our Sustainable City plan to end our dependence on coal by 2025, and we know that the future of our planet, economy, and children's health depends on cities across the world moving forward with us. I am disappointed that the Supreme Court is taking a step backwards by putting a hold on President Obama's sensible clean power plan. But here's the good news: no matter what happens on the federal level, local leaders will not ignore the danger of complacency, or the urgent need for immediate action.”

- **Colorado**

○ Governor Hickenlooper statement:

“While we're still reviewing the implications of the Supreme Court's decision, we remain committed to having the cleanest air in the nation. We'll continue to build upon the great strides we've made as a state — with the Clean Air Clean Jobs Act and our Renewable Energy Standard — to protect our public health and environment.”

○ CO Department of Public Health & Environment:

“It is prudent for Colorado to move forward during the litigation to ensure that the state is not left at a disadvantage if the courts uphold all or part of the Clean Power Plan. Because the Supreme Court did not say whether the stay would change the rule’s compliance deadlines, Colorado could lose valuable time if it delays its work on the state plan and the rule is ultimately upheld.”

- **Connecticut** Governor Dannel Malloy statement: "I believe in science - the data is real.

Global warming is happening. Urgent action is needed on a national and an international basis to combat it. That's why the Supreme Court's ruling to pause implementation of the Clean Power Plan is disappointing and shortsighted. However, it is not a final decision on the legal merits of the Clean Power Plan, so it is important that we continue with preparations for compliance with the plan while these issues are being worked out in the courts.

Connecticut is already a national leader on global warming - and that will not change. We're going to continue to cut carbon in a cost-effective, reliable manner while growing a clean energy economy. Through programs like the Regional Greenhouse Gas Initiative, we already have achieved significant reductions in carbon pollution from the electric sector, while growing our economies and maintaining reliable power. We have an obligation to combat greenhouse gases, and Connecticut is going to continue to do just that."

- **Delaware** Governor Jack Markell ([via Facebook](#)): "I am disappointed in yesterday's Supreme Court action on the EPA Clean Power Plan, but optimistic that it will be upheld when the courts review the merits of the case. We remain determined to move forward in responding to the issue of climate change. As a RGGI state, Delaware has led the country in working to curtail greenhouse gas emissions from the power sector, and we will continue to do so regardless of the decision to stay the Clean Power Plan rule. As a coastal state, we are acutely aware of the serious threats of climate change and sea level rise, and the Clean Power Plan represents a sensible and flexible approach for states to make the changes required to protect our economy and quality of life."

• **Massachusetts** **Attorney General Maura Healey**: "Although we are disappointed with the Supreme Court's decision to delay implementation of the EPA's Clean Power Plan, we believe the courts will uphold this program after full consideration of the merits of the case. Massachusetts has made important progress on addressing the threat of climate change, and as this case proceeds we will work with our coalition of states and local governments to continue to defend the Clean Power Plan's reasonable, flexible and cost effective approach to lowering the greenhouse gas emissions of our country's power plants."

- **Minnesota**
 - **Governor Mark Dayton** statement: "While the Court's temporary stay is disappointing, it does nothing to diminish our resolve in Minnesota to keep moving forward on clean energy initiatives, including the development of our state's Clean Power Plan. President Obama's strong leadership, the nation-leading initiatives of some of our state's utilities, and my administration's commitment will assure our

state's continued progress.

"We shouldn't need a federal edict to understand how vital it is that we keep doing everything in our collective powers to reduce harmful greenhouse gas emissions, improve energy efficiency, and advance Minnesota's clean energy economy."

○ Minnesota Pollution Control Agency ([via Twitter](#)) "CleanPowerPlanMN is moving forward – attend our listening session in Bemidji next week."

- **New Hampshire** Governor Maggie Hassan: "New Hampshire has long led efforts to cut carbon emissions and combat climate change so that we can have the cleaner and safer environment that our people need to live healthy, productive lives – and it's crucial that other states follow our lead and take responsibility for the pollution that they cause. Through programs such as the Regional Greenhouse Gas Initiative, our region is showing that it is possible to protect public health, spur energy innovation, and promote affordable, reliable energy sources for our economy. That's why I have been a strong supporter of the Clean Power Plan, and the Supreme Court's decision to delay this important step forward is very disappointing."

-

- **New York**
 - AG Eric Schneiderman + Joint Statement of States and Counties: "We are confident that once the courts have fully reviewed the merits of the Clean Power Plan, it will be upheld as lawful under the Clean Air Act. Our coalition of states and local governments will continue to vigorously defend the Clean Power Plan—which is critical to ensuring that necessary progress is made in confronting climate change."
 - Governor Andrew Cuomo quote: "The Supreme Court's decision to temporarily halt President Obama's Clean Power Plan is a disappointing setback in the nation's efforts to address climate change. The plan should absolutely be upheld on its merits, and New York State remains committed to moving forward with our own actions to protect the environment and the public health. From dedicating \$5 billion to advance the clean tech economy, to requiring that 50 percent of electricity in the state come from renewable sources by 2030 and limiting greenhouse gas emissions in line with the global Under 2 MOU, New York is leading by example in addressing one of the most pressing challenges of our time. But this issue requires a global response – and the Clean Power Plan is crucial to ensuring a cleaner, greener, and safer future for

all.”

- **Oregon** Governor Kate Brown ([via Facebook](#)): “Even though the Clean Power Plan is going through a battle in the courts, Oregon has been and continues to be committed to national efforts to reduce greenhouse gas emissions from the power sector. Oregon is well-positioned to comply with the EPA targets because there have already been early actions in Oregon through investments in energy efficiency, renewable energy development, and moving away from coal.”

- **Pennsylvania**

- DEP Secretary John Quigley quote: “The rule’s in effect, the rule hasn’t gone away. We, at least currently, see a path to submitting [a state plan] on Sept. 6... It’s clear that renewables are the future. What the Clean Power Plan is calling for is really good business.”

- Governor Wolf’s spokesman Jeff Sheridan quote: “Pennsylvania will continue planning and engagement with stakeholders on the Clean Power Plan, pending final decision of this issue by the Supreme Court. We will continue to closely monitor the ongoing legal process.”

- **Vermont** Governor Peter Shumlin statement: “This is incredibly disappointing news. The forces fighting President Obama’s common sense plan are those with a stake in the dirty energy status quo that is of polluting our air, water, and forests and contributing to global climate change. Their desperate attempt to make a profit at the expense of our health and the future of the planet is standing in the way of serious action to combat climate change and preserve a livable planet for future generations.

“It is no surprise that the suit over the Clean Power Plan was brought by proponents of the coal industry. That industry, and those who support it, will do everything they can to boost their profits, even if it means imperiling our planet’s future. This is just one more example why Vermont should not be in the business of supporting the coal industry and should divest from coal stocks.”

- **Virginia** Governor McAuliffe statement: “Over the last several months my administration has been working with a diverse group of Virginia stakeholders that includes members of the environmental, business, and energy communities to develop a strong, viable path forward to comply with the Clean Power Plan. As this court case moves forward, we will stay on course and continue to develop the elements for a Virginia plan to reduce carbon emissions and stimulate our clean energy economy.”
- **Washington** Governor Inslee statement: “Yesterday’s Supreme Court ruling on the Clean Power Plan is very troubling, surprising, and disappointing. And it inexplicably breaks with past rulings in which the high court has called for federal rules to limit the carbon pollution that is driving climate change.

“We cannot afford to wait any longer for federal action to address carbon pollution and transition to clean energy. Here in Washington state we are unfortunately already seeing the harmful impacts of climate change, and we will continue to take steps that reduce carbon and to lead the nation in clean energy. The EPA’s Clean Power Plan remains a crucial tool to ensure that every state must do its part, and to empower them to do so.

This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

To: Goffman, Joseph[Goffman.Joseph@epa.gov]
From: Niebling, William
Sent: Thur 2/11/2016 1:19:54 AM
Subject: Fwd: White House: Court ruling won't affect Paris climate deal

Ex. 5 - Deliberative

Begin forwarded message:

From: POLITICO Pro Energy Whiteboard <politicoemail@politicopro.com>
Date: February 10, 2016 at 12:43:38 PM EST
To: <niebling.william@epa.gov>
Subject: White House: Court ruling won't affect Paris climate deal
Reply-To: POLITICO subscriptions <reply-fe9a11707c61057c75-608682_HTML-637926424-1376319-0@politicoemail.com>

By Sarah Wheaton

02/10/2016 12:31 PM EDT

The White House insisted on Wednesday the United States can still hold up its end of the Paris climate change agreement despite the Supreme Court ruling that blocked the EPA's carbon regulation.

Calling the ruling a "temporary procedural determination," White House spokesman Eric Schultz said, "The schedule for this litigation looks like it will be concluded well in time for the U.S. to make its commitments in the Paris agreement."

Speaking to reporters aboard Air Force One, Schultz said that other measures beyond the Clean Power Plan can help the U.S. meet its commitments, including new fuel standards for cars and airplanes.

Schultz also pointed to a long-term extension of a renewable energy tax credit in the budget deal signed late last year. "It is our estimation that the inclusion of those tax credits is going to have more impact over the short term than the Clean Power Plan," he said.

He brushed off questions that the high court's move was spooking the other parties to the Paris deal, saying, "Our international partners are well aware the policy-making process in the United States is a complicated process, there's often litigation."

Schultz dismissed a questions about whether the administration has a "Plan B" if the courts ultimately reject the carbon rule.

"I'm familiar with Plan B questions because they were often asked to us in the context of the

Supreme Court ruling on the Affordable Care Act," Schultz said, reiterating the administration's confidence of a similar legal victory.

To view online:

<https://www.politicopro.com/energy/whiteboard/2016/02/white-house-court-ruling-wont-affect-paris-climate-deal-067315>

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Energy: Receive All. To change your alert settings, please go to
<https://www.politicopro.com/member/alerts>**

This email was sent to niebling.william@epa.gov by: POLITICO, LLC 1000 Wilson Blvd.
Arlington, VA, 22209, USA

To: Stewart, Lori[Stewart.Lori@epa.gov]; Jordan, Deborah[Jordan.Deborah@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Millett, John[Millett.John@epa.gov]; McCabe, Janet[McCabe.Janet@epa.gov]
From: Rupp, Mark
Sent: Wed 2/10/2016 11:25:24 PM
Subject: Re: Fwd: Denver Post: Colorado officials won't halt Clean Power Plan efforts despite ruling

Ex. 5 - Deliberative

On Wed, Feb 10, 2016 at 3:22 PM -0800, "Millett, John" <Millett.John@epa.gov> wrote:

FYI.

John Millett
202.510.1822

Begin forwarded message:

From: "Mylott, Richard" <Mylott.Richard@epa.gov>
Date: February 10, 2016 at 6:11:57 PM EST
To: "Harrison, Melissa" <Harrison.Melissa@epa.gov>, "Millett, John" <Millett.John@epa.gov>
Subject: **Denver Post: Colorado officials won't halt Clean Power Plan efforts despite ruling**

fyi.

http://www.denverpost.com/news/ci_29500043/colorado-officials-wont-halt-clean-power-plan-efforts

Denver and the West

Colorado officials won't halt Clean Power Plan efforts despite ruling

Gov. John Hickenlooper thinks state should 'stay the course' on compliance

By Jesse Paul
The Denver Post

Posted: 02/10/2016 11:14:09 AM MST [13 Comments](#) | Updated: 37 min. ago

Colorado health and environmental officials will continue working toward compliance with the controversial Clean Power Plan despite a Supreme Court decision Tuesday blocking the program's immediate implementation.

State leaders say talks with stakeholders will be ongoing as part of efforts to meet the Environmental Protection Agency's carbon reduction targets for Colorado set forth by the initiative.

The nation's top court ruled in a 5-4 decision that the plan hailed by President Barack Obama as a major effort to tackle climate change should not go into effect until after a lawsuit to block the regulations is resolved.

The initiative, sometimes called a "war on coal," caused political turmoil in Colorado after Gov. John Hickenlooper, a Democrat, launched a failed campaign to stop Attorney General Cynthia Coffman from joining the suit.

Coffman, a Republican, says the plan is an overreach by the EPA and that's why she joined the challenge filed by 27 mostly Republican states. She celebrated the Supreme Court's ruling as affirming those beliefs.

Advertisement

Nevertheless, the Colorado Department of Public Health and Environment says it will keep coordinating to follow the plan's rules.

"It is prudent for Colorado to move forward during the litigation to ensure that the state is not left at a disadvantage if the courts uphold all or part of the Clean Power Plan," the department said.

Kathy Green, a spokeswoman for Hickenlooper, said the governor agrees that Colorado should "stay the course" when it comes to moving forward with the program.

"While we're still reviewing the implications of the Supreme Court's decision, we remain committed to having the cleanest air in the nation," Hickenlooper said in a statement. "We'll continue to build upon the great strides we've made as a state."

Coffman told The Denver Post she respects CDPHE's role, explaining that the purpose of her joining the lawsuit was to give the state domain to determine what regulations are best for itself. She said she is confident the courts will ultimately strike down the Clean Power Plan for infringing on state's sovereignty.

"In the end, it will be up to our state and not the federal government," Coffman said. "In the meantime, the Supreme Court's order preserves the status quo to ensure no state is harmed while the courts consider the merits of this legal challenge. "

Xcel Energy, Colorado's largest electricity provider, said the ruling will not hamper its efforts to develop "sound plans to create a sustainable and affordable energy future" alongside state officials and environmental groups.

Mark Stutz, an Xcel spokesman, pointed toward the company's "Our Energy Future" project announced last month as a customer-driven campaign to harness new power technologies.

Tri-State Generation and Transmission Association, a Westminster-based wholesale electric power supplier that owns several coal mines on the Western Slope, lauded the Supreme Court's ruling.

The energy cooperative called the decision a "monumental step forward in the effort to stop the costly and legally-flawed regulation."

"This is a tremendous victory for our members who rely on fossil fuel generation as a source of affordable and reliable power, the employees who work at our plants and coal mines and the communities where our operations are located," Mike McInnes, chief executive officer of Tri-State, said in a statement.

State officials' decision to move forward also comes as Colorado House Democrats passed a bill Tuesday to add measurable goals and deadlines to the state's plan to fight climate change.

Without a single Republican vote in the House, however, the bill would appear to be doomed as it moves to the Republican-led Senate.

The Clean Power Plan targets existing coal-burning power plants to cut carbon emissions nationwide by 32 percent before 2030 against 2005 levels. In Colorado, the plan calls for a 28 percent reduction in overall carbon dioxide emissions by 2030 against 2012 levels.

The EPA says the delay imposed by the Supreme Court could postpone those reductions in greenhouse gas emissions.

Jesse Paul: 303-954-1733, jpaul@denverpost.com or @JesseAPaul

To: Harrison, Melissa[Harrison.Melissa@epa.gov]; Rupp, Mark[Rupp.Mark@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]
Cc: Allen, Laura[Allen.Laura@epa.gov]; Purchia, Liz[Purchia.Liz@epa.gov]
From: McCabe, Janet
Sent: Wed 2/10/2016 10:34:42 PM
Subject: RE: TALKING POINTS ON THE CPP STAY

Great!

From: Harrison, Melissa
Sent: Wednesday, February 10, 2016 5:30 PM
To: Rupp, Mark <Rupp.Mark@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Allen, Laura <Allen.Laura@epa.gov>; Purchia, Liz <Purchia.Liz@epa.gov>
Subject: TALKING POINTS ON THE CPP STAY

Good evening,

Below are final talking points on the Clean Power Plan stay. I will be sending these to PADs and Comms Directors next. These can also go to AAs and RAs as needed. Let me know if you have any questions.

Thanks!

Melissa

TALKING POINTS ON THE CPP STAY

Ex. 5 - Deliberative

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Ex. 5 - Deliberative

Ex. 5 - Deliberative

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Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Personal Cell/email

Harrison.Melissa@epa.gov

To: Rupp, Mark[Rupp.Mark@epa.gov]; McCabe, Janet[McCabe.Janet@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]
Cc: Allen, Laura[Allen.Laura@epa.gov]; Purchia, Liz[Purchia.Liz@epa.gov]
From: Harrison, Melissa
Sent: Wed 2/10/2016 10:30:14 PM
Subject: TALKING POINTS ON THE CPP STAY

Good evening,

Below are final talking points on the Clean Power Plan stay. I will be sending these to PADs and Comms Directors next. These can also go to AAs and RAs as needed. Let me know if you have any questions.

Thanks!

Melissa

TALKING POINTS ON THE CPP STAY

Ex. 5 - Deliberative

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Ex. 5 - Deliberative

Ex. 5 - Deliberative

Ex. 5 - Deliberative

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Mobile: (202) 697-0208

Harrison.Melissa@epa.gov

To: McCabe, Janet[McCabe.Janet@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]
Cc: Millett, John[Millett.John@epa.gov]; Purchia, Liz[Purchia.Liz@epa.gov]; Harrison, Melissa[Harrison.Melissa@epa.gov]
From: Fried, Becky
Sent: Wed 2/10/2016 2:47:57 PM
Subject: Draft - CPP Mass Mailer
[02 10 16 GM Mass Mailer - CPP Stay.docx](#)

Janet and Joe –

Attached is draft text for a short Mass Mailer that would go out to EPA-all today (ideally later this morning) to address the Supreme Court decision on CPP.

I know our messaging on this is still evolving, so please do let me know of any edits or changes you'd like to see. I can integrate those before sharing with the Administrator for her to review.

Thanks much,

Becky Fried

Director of Speechwriting

U.S. Environmental Protection Agency

O: 202.564.0960

Personal Cell/email

fried.becky@epa.gov

To: McCabe, Janet[McCabe.Janet@epa.gov]; Goffman, Joseph[Goffman.Joseph@epa.gov]; Millett, John[Millett.John@epa.gov]; Harrison, Melissa[Harrison.Melissa@epa.gov]
From: Drinkard, Andrea
Sent: Wed 2/10/2016 12:02:35 AM
Subject: Current version of materials
[EPA statements 02 04 16 SCOTUS.DOCX](#)
[ATT00001.htm](#)
[CPP 2 Stay Preparatory QA SCOTUS 02 08 16.docx](#)
[ATT00002.htm](#)

Here's the current drafts of the materials. Not ready for use, but review. Of course waiting for direction from the WH.

Andrea Drinkard
(o) 202.564.1601

Personal Cell/email

Begin forwarded message:

From: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Date: February 8, 2016 at 3:05:55 PM EST
To: OAR Briefings <OAR_Briefings@epa.gov>
Subject: For Janet's and Joe's folders tonight

Thanks!

To: Joseph Goffman **Personal Cell/email**
From: Goffman, Joseph
Sent: Sat 3/19/2016 2:33:08 AM
Subject: Fwd: CPP stay

- Joseph Goffman
 Sent from my iPhone

Begin forwarded message:

From: "McCabe, Janet" <McCabe.Janet@epa.gov>
Date: March 18, 2016 at 10:13:12 PM EDT
To: "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Harvey, Reid" <Harvey.Reid@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Niebling, William" <Niebling.William@epa.gov>
Subject: CPP stay

You may have seen this blog by Ricky Revesz.

Ex. 5 - Deliberative

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March 16, 2016, 07:30 am

Supreme Court ruling on Clean Power Plan doesn't halt EPA action or change timeline

By Richard Revesz, contributor

Last month, the Supreme Court unexpectedly issued a "stay" of the Clean Power Plan, the centerpiece of the Obama administration's efforts to mitigate climate change. This decision unquestionably bars the Environmental Protection Agency (EPA) from enforcing any of the rule's requirements until the lawsuits against it are fully resolved. But opponents claim that the stay requires the EPA to halt *all* work related to the rule. Under their spurious interpretation, the agency could not, for example, provide additional guidance on emissions trading to the many states and power companies that are moving ahead with planning processes for meeting the rule's carbon reduction targets. In fact, there is ample precedent for federal agencies continuing to work on policies stayed by courts.

Opponents also argue that the stay automatically "tolls" all of the Clean Power Plan's compliance deadlines. In other words, they claim that even if the rule is upheld and the stay lifted, all future deadlines will be postponed for at least the amount of time that the stay was in place. This argument, too, is incorrect. The stay order itself

says nothing about tolling, and prior practice suggests that if the rule is upheld, it will be up to the D.C. Circuit to decide whether and how to adjust the rule's timeline, which doesn't call for full compliance until 2030.

History shows that a "stay" doesn't stop agency efforts

Before the Supreme Court's decision, the EPA released an initial draft — in a separate docket from the Clean Power Plan itself — of model trading rules for states seeking to use emissions trading systems to meet their carbon reduction targets. (The agency also released a draft federal plan outlining compliance options for states that do not submit their own plans to the EPA.) The agency planned to finalize the model trading rules during the summer of 2016 in order to support local planning efforts, which are continuing in many states (including several that are opposed to the Clean Power Plan). Legal precedent suggests that the EPA has the right to continue this work.

Opponents of the rule have argued to the contrary. The attorneys general of Texas and West Virginia (two of the states leading the challenge to the Clean Power Plan in court) recently claimed that "the States, their agencies, and EPA should put their pencils down." Jeff Holmstead, a former EPA official under President George W. Bush who is representing opponents of the Clean Power Plan, argued that further work by EPA would be the equivalent of "thumbing your nose at the Supreme Court." Sen. James Inhofe (R-Okla.) recently made similar comments.

But the EPA has taken actions to implement stayed rules under both the Republican and Democratic administrations over a period spanning almost two decades. After the U.S. Court of Appeals for the D.C. Circuit issued a stay on the EPA's Cross-State Air Pollution Rule in 2011, the agency continued work on the rule by adjusting state emissions budgets and resolving issues related to modeling. At the time, the EPA argued that its action "is consistent with and is unaffected by the Court's Order staying the [rule]."

In 2003, under the George W. Bush administration, the EPA also declined to "put its pencil down" when faced with a stay of its rule adding an equipment replacement provision to the Clean Air Act's New Source Review program. Indeed, while the stay was in place, the agency solicited public comments on multiple issues related to the rule. (Holmstead was the EPA's assistant administrator for air and radiation at that time.)

During the Clinton administration in 1999, the D.C. Circuit stayed the NOx SIP (Nitrogen Oxides State Implementation Plan) Call, a rule limiting nitrogen oxides emissions affecting downwind states. While the stay was in place, the agency pursued a related regulation, but gave states the option to voluntarily comply with the stayed rule instead.

Recent claims that the EPA must halt all work on the Clean Power Plan would be persuasive if the court had granted an injunction rather than a stay. The nature of these remedies is very different, but the opponents of the Clean Power Plan treat them as if they were equivalent. As Chief Justice John Roberts wrote in the majority opinion in *Nken v. Holder* (2009), a stay "halt[s] or postpon[es] some portion of the proceeding, or ... temporarily divest[s] an order of enforceability," whereas an injunction "directs the conduct of a party, and does so with the backing of [a court's] full coercive powers." In short, an injunction is a binding restriction on the *conduct of the agency*. A stay holds much less power, focusing only on the *enforceability of the rule*.

What happens to compliance deadlines?

The EPA's opponents have argued that the stay automatically delays, or "tolls" all Clean Power Plan deadlines, even though the Supreme Court made no mention of such tolling.

The U.S. Chamber of Commerce recently posted a white paper on its website arguing that, if the Clean Power Plan is upheld by the courts, the "EPA is required to move all the Rule's deadlines into the future by at least the amount of time between the Stay's issuance and its expiration." Inhofe echoed this claim and wrote to the EPA administrator asking her to make clear that such tolling would take place.

Here, again, these claims fly in the face of precedent. Indeed, none of the cases cited in the Chamber of Commerce's white paper support this tolling position. Decisions of this sort are made after a stay is lifted, as was the case for both the NOx SIP Call and the Cross-State Air Pollution Rule. Consistent with the proper reading of prior precedent, if the Supreme Court upholds the rule, or declines to hear the case after the D.C.

Circuit upholds it, the D.C. Circuit will decide what to do about the various deadlines. That is not a decision that the Supreme Court made when it granted the stay, and it is ultimately a matter to be decided by the federal courts, not the EPA.

The D.C. Circuit will eventually have wide discretion on what to do about the deadlines, and there are likely to be competing arguments. For example, the general counsel for the National Association of Regulatory Utility Commissioners suggested that "[t]he deadlines that are further out — the 2030 and 2022 deadlines — may change less than the nearer-term ones" after the stay is lifted. Given the extensive lead time and compliance flexibility already built into the Clean Power Plan, and various market forces and policies that are continuing to drive emissions reductions in the power sector, the judges may well decide that revisions to the Clean Power Plan's later deadlines are not justified.

While the stay is in effect, the EPA cannot impose Clean Power Plan requirements on any state that does not voluntarily act. But nothing bars the agency from continuing to develop guidance on emissions trading. Finalizing the model trading rules would both support states that want to move forward with their planning now and speed up the implementation process if the courts ultimately uphold the Clean Power Plan, thereby avoiding unnecessary delays that would further compromise our well-being. Providing interested states and regulated entities with tools to aid their planning is the responsible thing for the EPA to do.

Revesz is dean emeritus and Lawrence King Professor of Law at New York University School of Law, and director of the Institute for Policy Integrity. He is the co-author, with Jack Lienke, of the new book "Struggling for Air: Power Plants and the 'War on Coal.'"

To: Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Harvey, Reid[Harvey.Reid@epa.gov]
From: Goffman, Joseph
Sent: Thur 3/3/2016 1:16:34 PM
Subject: Fwd: Morning Energy, presented by Statoil: Will Republicans mention Flint when they debate down the road? — API huddling on new RFS approach — Oregon legislature passes coal phaseout bill

Please see the story below about the Chamber of Commerce white paper on the impact of the stay on the CPP deadlines.

Ex. 5 - Deliberative

Ex. 5 - Deliberative

- Joseph Goffman
 Sent from my iPhone

Begin forwarded message:

From: POLITICO Pro Energy <politicoemail@politicopro.com>
Date: March 3, 2016 at 5:01:19 AM CST
To: <goffman.joseph@epa.gov>
Subject: Morning Energy, presented by Statoil: Will Republicans mention Flint when they debate down the road? — API huddling on new RFS approach — Oregon legislature passes coal phaseout bill
Reply-To: POLITICO subscriptions <reply-fe8f117172660c7d7c-630326_HTML-637932885-1376319-0@politicoemail.com>

By Eric Wolff | 03/03/2016 05:59 AM EDT

With help from Alex Guillén, Darius Dixon, Darren Goode, and Esther Whieldon

REPUBLICANS TO DEBATE 70 MILES FROM FLINT: Republican presidential candidates thus far have largely avoided discussing the lead-poisoned waters of Flint, Mich., and have hesitated to criticize Gov. Rick Snyder. But tonight the four remaining candidates for nomination will take to the debate stage in Detroit, just an hour's drive south of Flint on I-75, opening the door for a potential discussion of Flint and the policy failures that lead to the crisis. Ohio Gov. John Kasich, who has focused on Michigan's March 8 primary but trails in public polls, has faced questions of his own over lead contamination in his home state, as employees of the Ohio EPA have resigned or been fired over high lead levels in the water in Sebring, Ohio. "I would hope that they'll show some political courage and start talking about this in a way that's not intended to protect Gov. Snyder," said Michigan Democratic Party Chair Brandon Dillon.

Democrats, especially Hillary Clinton, have put Flint at the center of the nomination campaign. They will debate in Flint on Sunday.

Meanwhile, federal aid to Flint remains held up in the Senate along with a bipartisan energy bill. Michigan Democrat Debbie Stabenow said remaining objections are "more just getting the energy bill squared away." But a key Senate aide said Wednesday that Sen. Mike Lee's hold remains in place over concerns that the Flint aid would increase the deficit and that the crisis should be the state's responsibility. Louisiana's David Vitter has been holding things up in an effort to get a vote on separate language benefiting Gulf of Mexico anglers. Energy and Natural Resources Chairwoman Lisa Murkowski declined to specify the remaining problems, but said Flint aid and the energy bill would remain "a package."

HAPPY THURSDAY! I'm your host Eric Wolff, and I just realized, they've started playing baseball again! The Nats beat the Rays yesterday 6-2 and the Yankees beat the Tigers 11-9 in their spring training openers. Huzzah! Spring training games may be meaningless, but your tips, quips, and comments are not! Send them to ewolff@politico.com, or follow us on Twitter [@ericwolff](https://twitter.com/ericwolff), [@Morning_Energy](https://twitter.com/Morning_Energy), and [@POLITICOPro](https://twitter.com/POLITICOPro).

INVISIBLE HAND HOLDS BACK LNG EXPORTS: While Congress presses ever harder for faster approvals of liquefied natural gas export terminals, developers are facing a harder road to securing customers than through the federal bureaucracy. As Pro's Elana Schor [reports](#) from the Texas Gulf Coast site of Freeport LNG's in-the-works export terminal, many developers have applied for permits to transport the glut of U.S. natural gas overseas, but it's looking less likely that many of them can lock in the long-term contracts that help pay for construction. That's in large part due to natural gas prices that have plummeted since the end of 2014, when they weren't exactly high. Meanwhile, Republican members of Congress are still pushing to accelerate what was once a years-long wait for permit approvals from the Department of Energy. Sen. Lisa Murkowski says a proposed 45-day deadline for DOE's LNG export approvals is "the foundation, the backbone" of a major energy policy overhaul now under intense negotiation in the Senate.

EPA UNDER THE TSCA-N SUN: EPA appears to largely prefer a Senate version of a major revision to chemical safety law, according to a letter from Administrator Gina McCarthy to congressional negotiators [obtained](#) by Pro's Darren Goode. Both houses of Congress passed updates to the 1976 Toxic Substances Control Act, but the two chambers have been slow to get together to negotiate a bill they could send to the president. The EPA letter, sent on Jan. 20 but previously unreported, says the Senate bill's handling of several major issues, like setting deadlines for EPA to review and regulate dangerous chemicals, are preferable to the House bill. But the letter largely avoids taking on the dicey topic of preempting state law and is silent on contentious Senate language that would "pause" state regulations on some chemicals while the agency determines how to act. EPA "would not be strengthening their hand in other parts of the bill ... if they got crosswise with" either side in that fight, said David Goldston, government affairs director at the Natural Resources Defense Council.

GERARD: API HUDDLING TO CREATE NEW RFS STRATEGY: The oil lobby is polling its members to develop a new strategy to develop a new strategy on the Renewable Fuel Standard in the wake of significant policy and political shifts in the ethanol world, American Petroleum Institute President and CEO Jack Gerard told ME Tuesday. "There's a

lot of different approaches to" going after the RFS, he said. API has long advocated for a full repeal of the program, though that has proved a tall order thanks to bipartisan support from corn-state lawmakers. EPA's decision last November to cut back on the corn ethanol requirement, along with gasoline consumption lagging well behind what Congress envisioned back in 2007, have changed the nature of the program and heightened interest in the issue. And Ted Cruz's win in Iowa indicated Republican candidates don't need to bow before ethanol interests to win that first-in-the-nation caucus.

There are several paths to weakening the RFS more likely to succeed than a full repeal, such as sun-setting the program after 2022 or repealing just the corn ethanol portion, leaving in place requirements for advanced biofuels. API and its members are sorting out exactly how to proceed and will soon coalesce around a strategy, Gerard said. "We'll sit down and reassess where we are today, and we'll be able to tell you with great clarity in the next 30-plus days exactly which approach we think we're going to get behind and push," he said.

ENVIROS SUE TO UNDO FERC PIPELINE REVIEW PROCESS: Delaware Riverkeeper Network is filing a [lawsuit](#) against FERC today over its review of a natural gas pipeline while also criticizing the agency's entire funding structure-an issue greens have become increasingly vocal about in the past year. FERC's review of the PennEast Pipeline Project and other projects is "infected by structural bias" because of the decades-old system in which the agency's budget comes from fees on the industry it regulates, according to the suit filed in U.S. District Court for the District of Columbia. That funding structure was designed in part to insulate the agency from the vagaries of the congressional appropriations process. But Riverkeeper argues it violates their due process rights because FERC would be biased toward approving projects "regardless of the legitimacy of the opposition to project proposals."

MCCLENDON DIES DAY AFTER INDICTMENT: The day after a federal grand jury indicted natural gas pioneer Aubrey McClendon for bid rigging, the former Chesapeake Energy CEO died in a car accident in which his vehicle collided with a bridge while exceeding the speed limit. "He pretty much drove straight into the wall," police Capt. Paco Balderrama said, [according to](#) CNBC. As Pro's Elana Schor [reports](#), McClendon, who was among the first to go big on horizontal drilling, was remembered as an innovator by the industry he helped invigorate. T. Boone Pickens called McClendon "charismatic and a true American entrepreneur," adding: "No individual is without flaws, but his impact on American energy will be long-lasting."

CRS HAS A LISTICLE: THE TOP EIGHT QUESTIONS ABOUT OBAMA'S OIL TAX: President Barack Obama's proposal to impose a \$10.25 fee provided no revenue estimate, no point of collection, and no detail on whether the fee would be applied differently to different firms, according to a Congressional Research Service [report](#) Energy and Natural Resources Chairman Lisa Murkowski will release today. The report will land as Energy Secretary Ernest Moniz appears before Murkowski's committee for a hearing on his department's budget, his third budget hearing of the week. He likely can expect to get questions on the oil fee from Murkowski. "We have astonishingly few details about the

President's proposal, and the few details we do have all suggest that this tax or 'fee' would further imperil the American energy renaissance," Murkowski said in a statement.

BUDGET DAY FOR BLM: Interior Secretary Sally Jewell met her quota of budget hearings with two this week, but Bureau of Land Management Director Neil Kornze will get his day in the Congressional spotlight today. Kornze is likely to get an earful from westerners on the committee, especially Subcommittee Chairman Mike Simpson of Idaho. BLM is also considering a rule to limit flaring and venting in natural gas production, and the members will also likely challenge him on the federal moratorium on new coal leases on public land.

**** A message from Statoil:** We're always pushing ourselves to think deeper to get to energy breakthroughs. At Statoil, we're leading the industry in utilizing subsea technologies, and discovering more efficient ways of producing oil & gas. We call that the power of possible. Learn how we see oil & gas differently at statoil.com/USA **

HIT THE BRICKS - HOUSE TO VOTE ON BRICK MACT BILL TODAY: The House will vote today on a bill delaying new EPA emissions standards for brick manufacturers until legal challenges have played out. The Brick Industry Association and environmental groups have both sued over the rule. Published in October after bouncing around the courts and the executive branch for well over a decade, the rule would curb hundreds of tons per year of hazardous air pollutants like hydrogen fluoride and hydrogen chloride. Democrats opposed the bill in committee; there are no amendments on the floor. The White House yesterday waved its veto pen at the bill, arguing that its delay for litigation only motivates the industry to "litigate the rulemaking and the related corrections notice for as long as possible in order to delay air pollution reductions."

OREGON SENDS COAL PHASEOUT BILL TO GOVERNOR: A bill to raising Oregon's renewable standard to 50 percent by 2040 and forcing the state's two largest utilities to rid themselves of coal power by 2030 heads to Gov. Kate Brown's desk. As Pro's Esther Whieldon reports, the bill passed the state Senate Wednesday in the final week of the legislative session.

BOOKER TRIES TO AVOID DROWNING IN WATER AGENCY SUIT: Lawyers for Sen. Cory Booker will head to court Friday to try and extricate the one-time mayor of Newark, N.J. from a massive scandal within the Newark Watershed Conservation and Development Corporation. As POLITICO New Jersey's David Giambusso reports, then-Mayor Booker was an ex-officio chairman of the NWCDC board, though he never attended a meeting. Lawyers for the trustees are suing him, among others, in bankruptcy court, saying he is at least partly responsible for the corruption that went on under his nose. Booker's lawyers argue that as mayor conducting his official duties, he is protected from the suit.

FLORIDA PANHANDLE COUNTIES TRY TO PROTECT WHAT'S THEIRS: Eight counties in Florida are supposed to receive money from a settlement with BP to compensate for damage from the Deepwater Horizon oil spill. But, as POLITICO Florida's Bruce

Ritchie reports, the state has dawdled with setting up a structure to manage much of the \$2 billion its counties are supposed to receive, and panhandle officials worry other parts of the state are trying to get a piece of the action.

READING GLASSES ON - GRID WILL COME BATTERIES INCLUDED: The US energy storage market is forecast to grow to 1.7 gigawatts valued at \$2.5 billion by 2020, GTM Research and the Energy Storage Association said in a report being released today. In 2015, 221 megawatts of storage were installed, which is more than was added the prior two years combined. Utility scale projects made up 85 percent of those deployments and most of them were in the PJM Interconnection, which covers the Mid-Atlantic region. GTM points to renewable growth and state policies that make it relatively cheap to pair solar and storage among the factors contributing to the growth spurt.

CHAMBER OF COMMERCE: STAY OF CLEAN POWER PLAN DELAYS ALL DEADLINES: As a result of a Supreme Court stay, all the deadlines in the Clean Power Plan would have to be pushed into the future, even if the courts eventually uphold the rule, according to a white paper released Wednesday by the Chamber of Commerce's Institute for 21st Century Energy. "We believe the proper interpretation of the Court's order is that the Stay tolls all the Rule's deadlines - not just those that actually fall during the Stay - for at least the period of time the Stay is in place."

JOURNOS WANT EPA TO KEEP PUBLISHING NOTIFICATIONS IN PRINT: The Society for Professional Journalists and 43 newspaper associations filed comments today asking EPA to continue its practice of publishing Clean Air Act permit notifications in mainstream newspapers. The agency last year floated the idea of simply relying on its websites instead of local newspapers to publish the notices. "To change this practice - one that has been in effect for more than 200 years - is bad for the American general public," SPJ National President Paul Fletcher said in a statement. Clean Air Act permit notifications, along with numerous other legal notifications have been a reliable revenue stream for regional newspapers for decades, if not centuries.

POLITICO Event - A New Agenda: Canada and the U.S. in the World As President Barack Obama prepares to welcome Canadian Prime Minister Justin Trudeau for a historic state visit, join POLITICO and CABC for a series of high-level conversations on North American leadership in the global economy, energy, security and the refugee crisis.

Featuring: Assistant Secretary for International Affairs & Chief Diplomatic Officer Alan Bersin, Danielle Droitsch of NRDC's Canada Project, White House Office of Energy & Climate Change's Richard Duke, Principal Deputy Assistant Secretary of Bureau of Population, Refugees & Migration at the U.S. Department of State Simon Henshaw, U.S. Customs and Border Protection Commissioner Gil Kerlikowske, Port Metro Vancouver CEO Robin Silvester and more. **Tues, March 8, 5 p.m. - The Newseum. RSVP:**
<http://bit.ly/1O72SAp>

SHOOTING THE RAPIDS

- BP oil spill damage 'dramatically diminished,' scientists say, New Orleans Times-

Picayune: <http://bit.ly/1OQLD6N>

- Environmental protection of Colorado River called disjointed. ABC News:
<http://bit.ly/1OQLD6N>

- When Will Flint's Water Be Safe To Drink?, FiveThirtyEight: <http://53eig.ht/1QmW2LN>

QUICK HITS

- The 'ridiculously' warm Arctic just set an ominous new record, WaPo:
<http://wapo.st/21DTK3f>

- In Scandal at Puerto Rico Utility, Ex-Fuel Buyer Insists He Took No Bribes, NYT:
<http://nyti.ms/21INioj>

- SunEdison's Troubles Darken Prospects of Vivint Deal, WSJ: <http://on.wsj.com/1RpZzXe>

- SandRidge Said to Be Unnamed Company in McClendon Indictment, Bloomberg:
<http://bloom.bg/1T9eJWI>

HAPPENING THURSDAY

8:30 a.m. - 2016 Advanced Energy Now Market Report Release & Business Panel Discussion, Advanced Energy Economy, Newseum, 529 14th St. NW

9 a.m. - [Budget Hearing - Office of Surface Mining Reclamation and Enforcement](#), House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies, Rayburn B-308

9:30 a.m. - [Hearing: Budget Hearing - Installations, Environment, Energy and BRAC](#), House Committee on Appropriations, Subcommittee on Military Construction, Veterans Affairs, and Related Agencies, The Capitol HVC-210

9:30 a.m. - [Hearing: Department of Energy Oversight: The DOE Loan Guarantee Program](#), House Committee on Science, Space, and Technology, Subcommittee on Energy, Rayburn 2318

9:45 a.m. - [Hearing to examine the Department of Energy's budget request for Fiscal Year 2017](#), feat. Energy Secretary Ernest Moniz, Senate Energy and Natural Resources Committee, Dirksen 366

10 a.m. - [Budget Hearing - Bureau of Land Management](#), feat. BLM Director Neil Kornze, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies Rayburn B-308

5:30 p.m. - Reception: Advances in clean energy, feat. Ellen Williams, director of The

Advanced Research Projects Agency - Energy, Dirksen G50

6:30 p.m. - Paris to D.C.: Acting for Affordable Clean Energy, United Nations Association of the National Capital Area, U.N. Foundation, 1750 Pennsylvania Avenue NW

9 p.m. - Republican Presidential debate, Detroit, Mich., Fox News Channel

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<https://www.politicopro.com/tipsheets/morning-energy/2016/03/pro-morning-energy-wolff-016126>

Stories from POLITICO Pro

On Gulf Coast, an LNG waiting game may pay off [Back](#)

By Elana Schor | 03/03/2016 05:00 AM EDT

QUINTANA, Texas - The Obama administration took almost four years to sign off on the Freeport natural gas export facility on this tiny Gulf Coast island, where trucks shuttle noisily around a humming construction site.

But that long wait may spare its owner, Freeport LNG, the pain of weathering a global supply glut that has sent prices for liquefied natural gas into a free fall.

For its competitors who have yet to receive Washington's blessing, that weak market global LNG market may be a bigger hurdle than the federal permits they need to ship the fuel abroad, since winning funding to build the multibillion dollar liquefaction plants depends on finding long-term customers to commit to buying the LNG at a healthy price.

Freeport LNG is backed by 20-year contracts signed before the international prices tumbled, while newer facilities - despite Capitol Hill's rhetoric about forcing the Department of Energy to move faster on approvals - could face a struggle to survive amid the wave of new suppliers coming online around the globe.

"These projects - everybody's applying [for permits] but nobody is giving notices to proceed

without long-term contracts," Zdenek Gerych, Freeport's special projects director, said in an interview at the company's \$12.5-billion partially completed facility.

Gerych predicted that the financial challenge of paying for massive export facilities in today's bleak market, where U.S. gas prices have fallen by about half since late 2014, would prove "regulating in itself" when it comes to the number of companies that are able to put excavators on the ground.

LNG prices in the Japanese, Korean and Chinese market started the year around \$5.75 per million British thermal unit, while European prices hovered between about \$4.40 and \$5.20 - levels that make it tough for U.S. LNG producers, even with U.S. natural gas prices at their lowest levels in 17 years.

Yet the Obama administration's approval process remains the dominant concern in Congress, where the House has passed legislation forcing DOE to issue decisions on export bids within 30 days of a completed review of a project by the Federal Energy Regulatory Commission, a shorter period than the 45 days the Senate is considering.

Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) last week touted the export-approval deadline as "the foundation, the backbone" of a bipartisan energy bill ([S. 2012](#)) she is still hoping will overcome GOP concerns and win approval along with a linked measure on aid to Flint, Mich.

Former White House energy adviser Jason Bordoff, the founding director of Columbia University's Center on Global Energy Policy, countered that DOE's speed of approvals "is not the barrier to more LNG projects moving forward."

"All government permitting processes can work more efficiently and faster, and DOE is probably no exception," Bordoff said by email, "but a focus on DOE permitting won't have much impact on the U.S. LNG export outlook and ignores the real barrier to more projects moving forward, which is the current state of the global oil and gas market."

International Energy Agency Executive Director Fatih Birol sounded a similar note at last week's industry-heavy IHS CERAWeek conference in Houston, where Cheniere Energy presented a polished video to celebrate its first U.S. LNG export cargo from a facility on Sabine Pass on the Texas-Louisiana border.

U.S. and Australian gas is expected to make up 90 percent of new LNG exports over the next several years, Birol noted, exerting "additional downward pressure on natural gas prices, which are already very low."

"Therefore the next generation of investments will be very difficult to realize," he added.

The buzz surrounding Cheniere's first shipment didn't make waves at Freeport, where executives and site managers were focused on meeting their target of bringing the plant's first gas liquefaction "train" online by the fall of 2018. The company has forecast a \$5

billion-plus boost to the U.S. economy from its facility, which also includes a unique air tower that pulls heat from the muggy Texas air to power the regasification process for nine months out of every year and minimize the emissions that come from gas-burning heaters.

Freeport has signed up some heavyweight buyers for its LNG shipments: BP, Toshiba, Japanese power providers Osaka Gas and Chubu Electric Power and the South Korean utility SK E&S. The importance of Asian markets to U.S. LNG exports often gets overlooked in Washington, however, where lawmakers and industry executives often pitch American energy exports to Europe as a geopolitical counterweight to Russia's role as the dominant fuel supplier.

The State Department's international energy envoy, Amos Hochstein, said in an interview that when he visits European nations that have thus far relied on the Middle East and Russia for gas supplies, he raises one question in particular: "Don't you think you should be diversifying?"

The arrival of U.S. gas exports "doesn't affect price," Hochstein added, "but I think it does affect the security of supply, and that's important."

Yet Freeport LNG and other exporters are eyeing price security first. Freeport recently pushed back its plans to start up a fourth liquefaction train on the site by a year, to 2021, an effective bet that global gas prices will be closer to climbing back by then. That plan for a fourth train is already under FERC review.

The Energy Information Administration projected last year that net U.S. LNG exports would reach 5.6 trillion cubic feet in 2040, with the bulk of the uptick in overseas sales coming before 2030. That assumes oil prices, to which LNG prices are often linked, sitting at well above their current level of about \$34 per barrel, however, and EIA estimates that a low-oil-price scenario would lead to U.S. LNG exports of 3 TCF in 2040.

"Wherever it replaces coal, there is an environmental benefit" to using natural gas, Gerych noted. But, he warned, there is "not limitless demand out there."

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Administration largely sides with Senate negotiators in TSCA talks [Back](#)

By Darren Goode | 03/03/2016 05:00 AM EDT

The Obama administration appears to be largely siding with the Senate in bicameral talks aimed at overhauling a landmark chemical safety law while mostly sidestepping one of the most contentious unresolved issues, according to a newly disclosed letter providing the most detailed window into its views to date.

EPA Administrator Gina McCarthy did not draw any firm lines in the sand in a recent letter outlining her agency's views on several technical but important details, but EPA indicated a

clear preference for many aspects of the Senate's more comprehensive update to the 1976 Toxic Substances Control Act.

"The lack of a workable safety standard, deadlines to review and act on existing chemicals, and a consistent source of funding are all fundamental flaws in TSCA that should be addressed," McCarthy wrote in the previously unreported Jan. 20 [letter](#) to negotiators in both chambers obtained by POLITICO. Those concerns are among those better handled in a bill the Senate adopted by voice vote in December, according to the letter.

McCarthy largely avoided taking a firm position on how the bill should address existing state-level chemical safety laws, one of the stickiest issues in the negotiations.

There has been little movement in talks between the two chambers this year, though sources on both sides of the Capitol remain optimistic. House negotiators last week sent over an offer that barely budged from their starting position, according to a Senate aide involved in the talks. A primary area of dispute is the extent to which state laws should be preempted, as well as the difference in scope between the Senate TSCA update and a far-narrower bill the House approved 398-1 last June.

McCarthy's letter included a seven-page analysis from EPA officials detailing their views on the two bills, in most cases favoring the Senate version (S. 697) over the House bill (H.R. 2576). The letter provides more detail than has been available to date on the administration's views because the White House never released a formal statement of administration policy before either the House or Senate bill passed last year.

EPA lauded several provisions found only in the Senate bill, including its requirements for the agency to regulate new chemicals and language to strengthen civil and criminal enforcement authorities. EPA did say it "strongly prefers" additional flexibility the House would give the agency to develop new policies because meeting the Senate's "document generation requirements may unnecessarily slow progress on more substantive issues."

McCarthy's letter largely sidesteps one of the most contentious aspects of the ongoing negotiations: the extent to which TSCA reform should preempt state chemical safety laws. EPA was silent on whether a final bill should include Senate language that would "pause" state-level regulations on particularly dangerous chemicals while the agency determines how best to act on them, and how easily states could receive a waiver from that pause.

"The administration supports an approach to preemption that provides a consistent regulatory regime for industry while allowing appropriate additional actions by the states," EPA wrote, highlighting California's Proposition 65 among the laws that should be protected and suggesting ways to improve preemption provisions in both chambers' bills.

An EPA spokeswoman confirmed the authenticity of the letter but declined to comment further.

Preemption of state laws is the top priority for the chemical industry, which views TSCA

reform as a replacement for the patchwork of existing state laws. But protecting those laws has been a top priority for Sen. [Barbara Boxer](#) (D-Calif.) and some environmental groups who worry about gaps in the regulatory safety net if states are prevented from controlling how chemicals are used before EPA can step in. Similarly, a Jan. 19 [letter](#) from 12 state attorneys general, including California and New York, highlights where they prefer either House or Senate preemption language but also stress they "strongly believe that preemption of state actions beyond that of existing TSCA is counterproductive."

"I think [EPA] made a political assessment that they would not be strengthening their hand in other parts of the bill that deal explicitly with federal authority if they got crosswise with" either side in that fight, said David Goldston, government affairs director at the Natural Resources Defense Council, which opposes the Senate preemption language.

Richard Denison of the Environmental Defense Fund, which has long backed the Senate bill, said the agency is just focusing on "the issues that are directly relevant to EPA," such as ensuring TSCA reform does not interfere with federal air and water laws, while staying out of peripheral fights.

Meanwhile, the industry is stepping up its call for strong preemption language. The American Alliance for Innovation, a coalition of 151 industry and business groups, sent a [letter](#) and detailed [wish-list](#) to negotiators Monday that is closest to the preemption approach adopted in the Senate bill.

Both the EPA and industry groups identified more provisions they prefer in the Senate bill than in the House bill, Denison said after reviewing the documents. The same is true, he said, of a [Jan. 7 analysis](#) of the two bills by the Environmental Council of the States.

But those appeals were not reflected in House negotiators' first substantive offer in the negotiations that they sent to the upper chamber Friday, according to Senate aides. But it "at the very least now opens the door for negotiation," one Senate aide said. Aides to lead House negotiators, including bill sponsor Reps. [John Shimkus](#) (R-Ill.), Energy and Commerce Chairman [Fred Upton](#) and Rep. [Frank Pallone](#) (D-N.J.), the committee's top Democrat, were unavailable for comment on the negotiations.

"The House is still sticking with the House position," one Senate aide said. "I don't think any of these letters has moved the needle much."

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Oregon legislature passes bill to double RPS, cut coal [Back](#)

By Esther Whieldon | 03/02/2016 06:42 PM EDT

The Oregon Senate today voted 17-12 to double the state's renewable mandate to 50 percent by 2040 and force its two largest utilities to wean themselves from coal generation by 2030.

The legislation represents a compromise between utilities and environmental groups in which the green groups agreed to drop a more aggressive proposal in a ballot initiative that would phase out coal more quickly. Republicans in both chambers fought the measure and stalled the original bill, HB 4036, when it came to the Senate.

But Democrats in the House stuffed another bill the Senate previously passed, [SB 1547](#), with the language. The House passed that measure on March 1 and with the Senate's approval today, the measure now heads to Governor Kate Brown, who is expected to sign it.

The bill, which applies only to Portland General Electric and Berkshire Hathaway Energy subsidiary Pacific Power, would allow the Oregon Public Utility Commission to create a competitive renewable procurement process. By 2025, at least 8 percent of the utilities' portfolio must come from renewable projects of 20 megawatts or less or from biomass facilities. The PUC would create a community solar program with at least 10 percent available to low-income residents.

The PUC could investigate whether a utility's compliance with the renewables and anti-coal requirements would make the company violate mandatory federal grid reliability requirements. The utility would be temporarily exempted from the state requirements until it could resolve the conflict.

The legislative session ends this weekend.

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Fight over Booker's role atop corrupt watershed agency heads to court [Back](#)

By David Giambusso - Capital New York | 03/03/2016 05:49 AM EDT

Lawyers for Sen. Cory Booker will argue in court Friday that he shouldn't be held responsible for the rampant corruption and defalcation at the nonprofit that ran Newark's entire water infrastructure when he was mayor.

The scandal that brewed for years under Booker's nose has already led to guilty pleas in federal court from two of the Newark Watershed Conservation and Development Corporation's top executives - including its former executive director, Linda Watkins Brashear, who bilked it of roughly \$1 million as the already cash-poor city was starved for revenue during the recession.

But Booker's lawyers argue the former mayor, as ex-officio chairman of the NWCDC board, was completely unaware of the misappropriation, and acted in "good faith" on the advice of the organization's officers, which included his long-time friend, general counsel Elnardo Webster.

Booker never attended a single meeting of the group, his lawyers point out, and as his role in the organization was an extension of his duties as mayor, they say he is immune from

personal liability.

"Booker's service on the Board was part and parcel of his service as Mayor and thereby part of his official duties when he served in that office," Booker attorney Gary Eisenberg wrote in a motion filed in December. "Because Booker's service on the Board was unquestionably within the scope of his employment as a 'public employee,' the New Jersey Tort Claims Act immunizes him from liability."

The current trustees of the NWCDC, whom Booker appointed in 2013 to dissolve the organization, are suing more than a dozen people in federal bankruptcy court for damages, and Booker is among them. No one has accused Booker of profiting personally from the various schemes at the watershed agency, but the current trustees say his negligence allowed the agency to run amok.

In [a brief filed last month](#), lawyers for the NWCDC trustees argued that Booker's claims of immunity are groundless.

"The purpose of the [Tort Claims Act] was and is to protect the public purse, not the public employee," wrote James Scarpone, who is representing the current NWCDC trustees. "This conclusion, unsupported by a single appellate decision of the New Jersey courts, is diametrically opposed to the TCA's purpose of protecting the public purse."

He went on to pillory Booker's claims that he relied on the "good faith" representations of the people he had put in place to run the watershed. Booker's lawyers said the former mayor had no way of knowing he was receiving cooked books.

"The mere fact that there were false and misleading financial statements provided by the accountants to the NWCDC board is not the end of the analysis," Scarpone wrote in the brief. "Their position on this motion amounts to nothing more than an assertion that [Booker] had no duties or obligations as [a member] of the board simply because professionals were retained."

In [a reply brief filed last week](#), Booker's lawyers repeated their assertion that the city relied on professional auditors who never gave any indication of the malfeasance underway. They say the current trustees readily admit the financial reports were false and misleading, yet seek to hold Booker accountable anyway.

The NWCDC was created in the 1970s, originally to manage the 35,000 acres of forest and wetlands in northern New Jersey that Newark owns and from which it draws its water. But by the time Booker was mayor, the city had awarded the agency contracts to run the entire infrastructure, from the reservoirs to the treatment plants to the actual delivery of water to the city.

Booker's lawyers criticized the NWCDC's claim that the board had breached its contract with the city of Newark, saying the claim fell short - a claim Scarpone all but mocked in his February filing, saying Booker's team was trying "to stand the real world on its head."

For years as mayor, Booker sought approval from the City Council to create a Municipal Utilities Authority to run the watershed. This would have allowed the MUA to bond for badly-needed capital infrastructure improvements. Fearing a loss of control, the Council refused, handing Booker a significant policy defeat.

In trying to sell the idea, Booker appeared at town-hall meetings throughout Newark's five wards. By his side always was Linda Watkins Brashear, the former executive director who has pleaded guilty to two counts of fraud and admitted in federal court that she took close to \$1 million in kickbacks and bribes.

She was considered by many to be in line to run Booker's MUA, and among the questionable spending practices was money that went to prepare for the new authority, including spending on office furniture, office design and consultants.

The NWCDC never tried to hide the fact that it was spending on the MUA that never was. Even putting the bribery, kickbacks and phony accounting aside, that alone, lawyers for its trustees argue, was a breach of contract.

"The NWCDC was an entity created by the City and funded by the City pursuant to a series of contracts each of which was induced by and based upon budgets submitted by the NWCDC and approved by the City acting through its Council," Scarpone wrote. "None of these budgets included expenses associated with an MUA."

He added, "The NWCDC took City funds designated for specific purposes and applied them to a completely different purpose."

The lawyers are scheduled to make oral arguments over Booker's inclusion in the suit on Friday in federal bankruptcy court in Newark.

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Panhandle officials worry about oil spill money being taken away [Back](#)

By Bruce Ritchie | 03/03/2016 05:51 AM EDT

TALLAHASSEE - Some Florida Panhandle officials are speculating about attempts by the state to take oil spill settlement money bound for eight affected counties in the region.

The use of that settlement money is rooted in a [2013 economic development bill](#) that established Triumph Gulf Coast Inc., a nonprofit corporation that would "create and administer" a recovery fund comprised of 75 percent of all economic damages recovered by the attorney general's office in connection with the 2010 Deepwater Horizon oil spill.

BP has agreed to pay Florida \$2 billion and up to \$1 billion to local governments in Gulf states to resolve economic damages claims, according to the [U. S. Department of Justice](#).

But a bill that would tweak the 2013 state law has languished in the House after being amended by the Senate.

"Right now if BP sends a check to the state of Florida, it's going to the state's general revenue fund," Allan Bense, a former Republican House speaker and present chairman of Triumph Gulf Coast, told NWFDailynews.com.

HB 351, which would revise cleanup criteria for petroleum contamination sites, passed the House before being amended by the Senate to adjust the 2013 law creating Triumph. The bill would specify that 75 percent of all funds received from a September 2015 BP settlement go to Triumph Gulf Coast.

But the bill hasn't been brought up in the House since it was sent over from the Senate with the law change on Feb. 18. Some Panhandle officials believe there is a backdoor attempt by other counties to take the money, the Northwest Florida Daily News reported.

Sen. Bill Montford, D-Tallahassee, told POLITICO Florida that the money was intended to help North Florida counties most affected by the oil spill and he wouldn't agree to allow it to go anywhere else.

"We knew all along when that money started coming there would be interest perhaps in moving it to other parts of the state," Montford said. "But that money belongs to and should be spent in North Florida."

House speaker Steve Crisafulli said no one has called to tell him the money was being taken away from the Panhandle counties. He said oil spill money wasn't included in the House budget because the state hasn't received the money. He said it will be up to future legislative leaders to decide how to spend it.

"When it does come in, certainly there is structure that can be set up for it," Crisafulli said. "But we never felt it was proper to contingency spend money that doesn't exist."

Rep. Matt Gaetz, a Republican who represents coastal Okaloosa County in the Panhandle, said the state law establishing Triumph doesn't need to be rewritten because the money hasn't been received.

"I'd love to see us take it (HB 351) up but if we don't, it's not as if these funds would go away," Gaetz said.

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Arlington, VA, 22209, USA

To: Michael H. Levin[mhlevin@mhllawgrp.com]; Freeman, Jody 2[freeman@law.harvard.edu]
From: Goffman, Joseph
Sent: Tue 3/1/2016 3:09:13 PM
Subject: RE: CPP stay

Reconsideration of SCOTUS stay? 4-4 leaves in place. Not sure how to get SCOTUS to reconsider DC Circuit denial.

From: Michael H. Levin [mailto:mhlevin@mhllawgrp.com]
Sent: Tuesday, March 01, 2016 7:58 AM
To: Freeman, Jody 2 <freeman@law.harvard.edu>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: CPP stay
Importance: High

Has anyone looked at petitioning the Supremes to reconsider the stay? Woke up this AM with this thought & haven't checked the S.Ct rules or precedents, but it occurred to me there may be an opening here if the SG doesn't block it as a matter of courtesy & Court protocol.

Does a 4-4 result on reconsideration supersede a prior 5-4 vote & leave the DC Circuit's denial standing? Are there additional disruption factors that further distinguish this from *Michigan*?

Just thinking.

Mike

To: Drinkard, Andrea[Drinkard.Andrea@epa.gov]
Cc: McCabe, Janet[McCabe.Janet@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]; Noonan, Jenny[Noonan.Jenny@epa.gov]; Miller, Julia[Miller.Julia@epa.gov]
From: Goffman, Joseph
Sent: Tue 2/16/2016 1:44:54 AM
Subject: Re: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Got 'em. Thanks

- Joseph Goffman
Sent from my iPhone

On Feb 15, 2016, at 8:43 PM, Drinkard, Andrea <Drinkard.Andrea@epa.gov> wrote:

Email 2 of 2.

Andrea Drinkard
(o) 202.564.1601

Personal Cell/email

Begin forwarded message:

From: "Miller, Julia" <Miller.Julia@epa.gov>
Date: February 15, 2016 at 3:06:53 PM EST
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>, "Lemon, Mollie" <Lemon.Mollie@epa.gov>, "Torres, Elineth" <Torres.Elineth@epa.gov>
Subject: Fwd: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Hi all,

These are the top Qs from AAPCA for tomorrow's call with states. I expect to get Qs from NACAA, NASEO and NARUC either this afternoon or tomorrow morning and will pass those along as soon as I receive them.

-Julia

Begin forwarded message:

From: Clint Woods <cwoods@csg.org>

Date: February 15, 2016 at 2:17:39 PM EST
To: "Miller, Julia" <Miller.Julia@epa.gov>
Subject: **RE: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan**

Julia,

Thanks so much for the call on Friday – Sorry I missed you. Below are the questions, in priority order, that we are hearing from our members regarding the stay:

1. Does EPA expect that, if the Clean Power Plan is ultimately upheld, the deadlines would be tolled by the amount of time the Supreme Court's stay remains in place? If not, why would the Agency depart from recent practice?
2. Does EPA intend to continue with CPP-related activity like the April 7 biomass workshop, coordination/development of the State Plan Electronic Collection System (SPeCS), or CEIP participation during the stay?
3. Does EPA expect that the stay will change the timelines for any other proposed or final rules, including Paris-related GHG programs?
4. How does the stay affect EPA's FY17 budget request, including \$25 million request for state CPP activities, and FY16 resources/staffing levels? Will staff and resources be redistributed to core air programs during the stay?

Clint Woods

Executive Director

Association of Air Pollution Control Agencies

2760 Research Park Dr.

Lexington, KY 40511

859.244.8040 – office

cwoods@csg.org

<http://www.cleanairact.org>

<image003.jpg>

From: Miller, Julia [<mailto:Miller.Julia@epa.gov>]
Sent: Friday, February 12, 2016 3:50 PM
To: Phil Assmus (passmus@4cleanair.org); Clint Woods; Miles Keogh; Jennifer Murphy; D Terry
Cc: Drinkard, Andrea; Rosenberg, Julie; Mitchell, Ken; Millett, John; Rupp, Mark; Noonan, Jenny; Wortman, Eric; Kornylak, Vera S.; Wood, Anna
Subject: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Dear Colleague:

We are pleased to invite you to participate in a call with Acting Assistant Administrator Janet McCabe to discuss the recent Supreme Court stay of implementation and enforcement of the Clean Power Plan pending judicial review.

Background

On February 9, 2016, the Supreme Court stayed implementation and enforcement of the Clean Power Plan pending judicial review. EPA firmly believes the Clean Power Plan will be upheld when the merits are weighed by the court because the Clean Power Plan rests on strong scientific and legal foundations. During the pendency of the stay, implementation and enforcement of the Clean Power Plan are on hold. EPA will continue to work with states that want to work with us on a voluntary basis.

Date: February 16, 2016

Time: 1:00pm Eastern

Call-in: (877) 290-8017; conference ID 52665151

Please dial in 10 minutes before your call's start time to ensure your participation.

We look forward to your participation. Information about the Clean Power Plan can be found on our website: www.epa.gov/cleanpowerplan

To: Joseph Goffman
From: Goffman, Joseph
Sent: Tue 2/16/2016 1:44:18 AM
Subject: Fwd: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Personal Cell/email

- Joseph Goffman
 Sent from my iPhone

Begin forwarded message:

From: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Date: February 15, 2016 at 8:43:33 PM EST
To: "McCabe, Janet" <McCabe.Janet@epa.gov>, "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Noonan, Jenny" <Noonan.Jenny@epa.gov>, "Miller, Julia" <Miller.Julia@epa.gov>
Subject: Fwd: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Email 2 of 2.

Andrea Drinkard
 (o) 202.564.1601

Personal Cell/email

Begin forwarded message:

From: "Miller, Julia" <Miller.Julia@epa.gov>
Date: February 15, 2016 at 3:06:53 PM EST
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>, "Lemon, Mollie" <Lemon.Mollie@epa.gov>, "Torres, Elineth" <Torres.Elineth@epa.gov>
Subject: Fwd: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Hi all,

These are the top Qs from AAPCA for tomorrow's call with states. I expect to get Qs from NACAA, NASEO and NARUC either this afternoon or tomorrow morning and will pass those along as soon as I receive them.

-Julia

Begin forwarded message:

From: Clint Woods <cwoods@csg.org>
Date: February 15, 2016 at 2:17:39 PM EST
To: "Miller, Julia" <Miller.Julia@epa.gov>
Subject: RE: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Julia,

Thanks so much for the call on Friday – Sorry I missed you. Below are the questions, in priority order, that we are hearing from our members regarding the stay:

1. Does EPA expect that, if the Clean Power Plan is ultimately upheld, the deadlines would be tolled by the amount of time the Supreme Court's stay remains in place? If not, why would the Agency depart from recent practice?
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Clint Woods

Executive Director

Association of Air Pollution Control Agencies

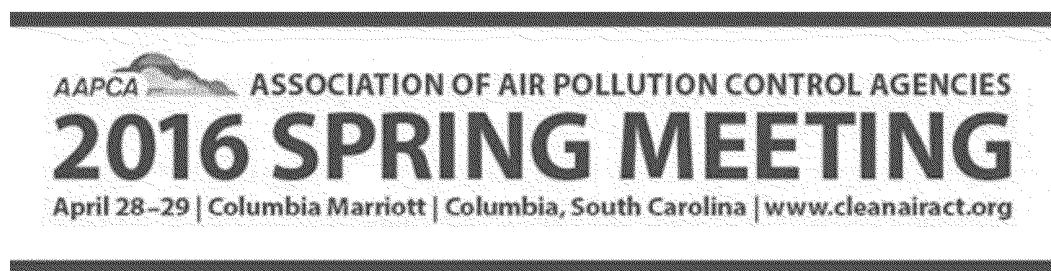
2760 Research Park Dr.

Lexington, KY 40511

859.244.8040 – office

cwoods@csg.org

<http://www.cleanairact.org>



From: Miller, Julia [<mailto:Miller.Julia@epa.gov>]

Sent: Friday, February 12, 2016 3:50 PM

To: Phil Assmus (passmus@4cleanair.org); Clint Woods; Miles Keogh; Jennifer Murphy; D Terry

Cc: Drinkard, Andrea; Rosenberg, Julie; Mitchell, Ken; Millett, John; Rupp, Mark; Noonan, Jenny; Wortman, Eric; Kornylak, Vera S.; Wood, Anna

Subject: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

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Date: February 16, 2016

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Please dial in 10 minutes before your call's start time to ensure your participation.

We look forward to your participation. Information about the Clean Power Plan can be found on our website: www.epa.gov/cleanpowerplan

To: Joseph Goffman **Personal Cell/email**
From: Goffman, Joseph
Sent: Tue 2/16/2016 1:43:45 AM
Subject: Fwd: Questions for Tomorrow

- Joseph Goffman
 Sent from my iPhone

Begin forwarded message:

From: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Date: February 15, 2016 at 8:42:31 PM EST
To: "McCabe, Janet" <McCabe.Janet@epa.gov>, "Goffman, Joseph" <Goffman.Joseph@epa.gov>
Cc: "Noonan, Jenny" <Noonan.Jenny@epa.gov>, "Miller, Julia" <Miller.Julia@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Subject: Fwd: Questions for Tomorrow

Hi Janet and Joe,

Here is the first of two emails with the top qs from the states. I wanted to get these to you tonight, but we'll pull answers in the am.

Most of these, except the last one, are in line with what we thought would be coming into us.

Let me know if there are any in particular you'd like us and oge to focus on.

Andrea Drinkard
 (o) 202.564.1601

Personal Cell/email

Begin forwarded message:

From: "Miller, Julia" <Miller.Julia@epa.gov>
Date: February 15, 2016 at 4:29:50 PM EST
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>, "Lemon, Mollie" <Lemon.Mollie@epa.gov>, "Torres, Elineth" <Torres.Elineth@epa.gov>
Subject: Fwd: Questions for Tomorrow

Here are the Qs from NACAA.

Begin forwarded message:

From: Phillip Assmus <passmus@4cleanair.org>
Date: February 15, 2016 at 4:16:17 PM EST
To: "Miller, Julia" <Miller.Julia@epa.gov>
Subject: Questions for Tomorrow

Julia,

I've gotten some state questions in anticipation of tomorrow's CPP call and have collected them below for your review. None should be too surprising. I hope they are a useful guide to help your team to prepare.

Phil

1. Are states under any obligation to make initial plan submittals, state plan submittals or any other other filings before the stay is lifted?
2. How will EPA revise the applicable submittal deadlines once the stay is lifted? To help illustrate, can EPA review the process and standards it applied to adjust the implementation deadlines for CSAPR? Are there other helpful examples states should review?
3. What CPP rulemakings and guidance remain outstanding (e.g., the model federal trading rules, the CEIP future notice and comment opportunity and EM&V guidance)? For each, how does the stay affect their development, public opportunity for comment and finalization timing?

4. To what extent can EPA continue to work with the states that elect to move forward on CPP implementation? What does EPA believe the limits of its authority are?

5. How should states contact EPA to seek assistance with CPP implementation? Does EPA need a written request?

6. Does EPA have authority to accept or review voluntary state submissions during the stay? If so, what kind of voluntary submissions would be appropriate?

7. How will voluntary state implementation actions taken during the stay be viewed for achieving compliance? For example, if the legal challenge is not resolved until 2018, and utilities take measures to comply between 2016 and 2018, will those measures still count toward compliance?

8. Does the recent Supreme Court vacancy call the stay into question or present EPA with an opportunity to challenge it?

To: Joseph Goffman
From: Goffman, Joseph
Sent: Fri 2/12/2016 11:58:27 PM
Subject: Fwd: ACTION: Reaction of states to CPP Stay
State Reaction Tracker-021216-KM.docx
ATT00001.htm

Personal Cell/email

- Joseph Goffman
 Sent from my iPhone

Begin forwarded message:

From: "Stewart, Lori" <Stewart.Lori@epa.gov>
Date: February 12, 2016 at 6:40:07 PM EST
To: "McCabe, Janet" <McCabe.Janet@epa.gov>, "Goffman, Joseph" <Goffman.Joseph@epa.gov>
Subject: Fwd: ACTION: Reaction of states to CPP Stay

Don't think this made it your folder.

Sent from my iPhone

Begin forwarded message:

From: "Wortman, Eric" <Wortman.Eric@epa.gov>
Date: February 12, 2016 at 2:29:52 PM EST
To: "Stewart, Lori" <Stewart.Lori@epa.gov>
Subject: FW: ACTION: Reaction of states to CPP Stay

FYI

From: Mitchell, Ken
Sent: Friday, February 12, 2016 12:29 PM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Rosenberg, Julie <Rosenberg.Julie@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Banister, Beverly <Banister.Beverly@epa.gov>; Kemker, Carol <Kemker.Carol@epa.gov>; Gettle, Jeannette <Gettle.Jeannette@epa.gov>; Mitchell, Ken <Mitchell.Ken@epa.gov>; Wortman,

Eric <Wortman.Eric@epa.gov>; Lincoln, Larry <Lincoln.Larry@epa.gov>; Riha, Kristin <Riha.Kristin@epa.gov>; Bailey, Ashten <Bailey.Ashten@epa.gov>; Senter, Stephen <Senter.Stephen@epa.gov>

Subject: ACTION: Reaction of states to CPP Stay

Andrea....

Janet asked me to poll the regions to get reaction from the states to the CPP stay. Attached is the responses I have as of now. Can someone get a copy of this to Janet before she leaves today? Thanks.

We'll update this again next week, but I suspect much of the "reaction" was stated this week.

Kenneth L. Mitchell, Ph.D. | Special Assistant to the Director |
Air, Pesticides, and Toxics Management Division
U.S. Environmental Protection Agency | 61 Forsyth Street, SW | Atlanta, GA 30303
Voice: 404-562-9065 | Fax: 404-562-9066 | Email: mitchell.ken@epa.gov
Healthier Families, Cleaner Communities, A Stronger America

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Also, please indicate to the sender that you have received this communication in error, and delete the copy you received.

To: joegoffman
From: Goffman, Joseph
Sent: Fri 2/12/2016 12:50:15 AM
Subject: FW: FOR REVIEW: Slide, talkers, Q&A for review
 Qs on CPP SCOTUS for regions Feb11_230pm.docx
[ATT00001.htm](#)
[CPP Stay-slide Feb 11 2016 v2.pptx](#)
[ATT00002.htm](#)
[Talking points for slide on CPP stay.docx](#)
[ATT00003.htm](#)

From: Drinkard, Andrea
Sent: Thursday, February 11, 2016 7:11 PM
To: McCabe, Janet <McCabe.Janet@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>
Subject: FOR REVIEW: Slide, talkers, Q&A for review

Apologies for the late email, but this is what we plan to share with the regions tomorrow. This is all based on existing materials. Let me know if you have any questions or edits.

Andrea Drinkard

(o) 202.564.1601

Personal Cell/email

Begin forwarded message:

From: "Ashley, Jackie" <Ashley.Jackie@epa.gov>
Date: February 11, 2016 at 4:37:41 PM EST
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>, "Noonan, Jenny" <Noonan.Jenny@epa.gov>
Cc: "Kornylak, Vera S." <Kornylak.Vera@epa.gov>, "Cortelyou-Lee, Jan" <Cortelyou-Lee.Jan@epa.gov>
Subject: Slide, talkers, Q&A for review

Andrea –

We have a vision for a small “region pack” that we’d like send around on Friday. It’s a slide, some talkers, and the 2-page Q&A. Could you please get Janet/Joe review as appropriate and let Jenny/Jan know when it’s cleared to send to Ken M for distribution? Thanks.

Jackie Ashley - US EPA - Office of Air Quality Planning and Standards - 919-541-7664 –
ashley.jackie@epa.gov

To: pjones@utc.wa.gov[pjones@utc.wa.gov]
From: Goffman, Joseph
Sent: Thur 2/11/2016 3:07:33 AM
Subject: Fwd: EPA statement

- Joseph Goffman
Sent from my iPhone

Begin forwarded message:

From: "Purchia, Liz" <Purchia.Liz@epa.gov>
Date: February 9, 2016 at 9:26:09 PM EST
To: "Garbow, Avi" <Garbow.Avi@epa.gov>, "Vaught, Laura" <Vaught.Laura@epa.gov>, "Distefano, Nichole" <DiStefano.Nichole@epa.gov>, "McCabe, Janet" <McCabe.Janet@epa.gov>, "Fritz, Matthew" <Fritz.Matthew@epa.gov>, "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Rupp, Mark" <Rupp.Mark@epa.gov>
Subject: EPA statement

We just sent this out from EPA

We're disappointed the rule has been stayed, but you can't stay climate change and you can't stay climate action. Millions of people are demanding we confront the risks posed by climate change. And we will do just that. We believe strongly in this rule and we will continue working with our partners to address carbon pollution.

Liz Purchia
U.S. EPA
202-564-6691

Personal Cell/email

On Feb 9, 2016, at 8:52 PM, Purchia, Liz <Purchia.Liz@epa.gov> wrote:

Liz Purchia
U.S. EPA
202-564-6691

Personal Cell/email

Begin forwarded message:

From: White House Press Office <noreply@messages.whitehouse.gov>
Date: February 9, 2016 at 8:51:45 PM EST
To: <purchia.liz@epa.gov>
Subject: Statement by the Press Secretary
Reply-To: <noreply@messages.whitehouse.gov>

THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE

February 9, 2016

Statement by the Press Secretary

We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation proceeds. The Clean Power Plan is based on a strong legal and technical foundation, gives States the time and flexibility they need to develop tailored, cost-effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change. We remain confident that we will prevail on the merits. Even while the litigation proceeds, EPA has indicated it will work with states that choose to continue plan development and will prepare the tools those states will need. At the same time, the Administration will continue to take aggressive steps to make forward progress to reduce carbon emissions.

###

[Unsubscribe](#)

The White House · 1600 Pennsylvania Avenue, NW · Washington DC 20500 · 202-456-1111

ED_000948_00002413-00002

To: Fried, Becky[Fried.Becky@epa.gov]
Cc: McCabe, Janet[McCabe.Janet@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov];
Purchia, Liz[Purchia.Liz@epa.gov]; Harrison, Melissa[Harrison.Melissa@epa.gov]; Millett,
John[Millett.John@epa.gov]
From: Goffman, Joseph
Sent: Wed 2/10/2016 3:41:38 PM
Subject: Re: 02 10 16 GM Mass Mailer - CPP Stay jg

Andrea - can you please cross walk with the Janet TPs we just looked at? Thanks

- Joseph Goffman
Sent from my iPhone

On Feb 10, 2016, at 10:38 AM, Fried, Becky <Fried.Becky@epa.gov> wrote:

Thanks.

Also attached are a derivative set of talking points that would be sent out to PADs as guidance for talking about the stay.

Your comments welcome on these as well. We are hoping to get both this, and the mailer out later this morning.

Thank you.

Becky Fried

Director of Speechwriting

U.S. Environmental Protection Agency

O: 202.564.0960

Personal Cell/email

fried.becky@epa.gov

From: Goffman, Joseph
Sent: Wednesday, February 10, 2016 9:58 AM
To: Fried, Becky <Fried.Becky@epa.gov>
Cc: McCabe, Janet <McCabe.Janet@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Purchia, Liz <Purchia.Liz@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>; Millett, John <Millett.John@epa.gov>
Subject: 02 10 16 GM Mass Mailer - CPP Stay jg

A couple of typos and a couple of sentences to think about adding here and in other communications. Thanks.

<02 10 16 CPP Stay TPs.docx>

To: McCabe, Janet[McCabe.Janet@epa.gov]
From: Stewart, Lori
Sent: Wed 2/17/2016 11:37:48 AM
Subject: Re: Notes from the Administrator's Senior Staff meeting

Not Responsive

From: Stewart, Lori
Sent: Tuesday, February 16, 2016 2:17 PM
To: McCabe, Janet <McCabe.Janet@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Flynn, Mike <Flynn.Mike@epa.gov>; DeMocker, Jim <DeMocker.Jim@epa.gov>; Salgado, Omayra <Salgado.Omayra@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Subject: Notes from the Administrator's Senior Staff meeting

Not Responsive

Region 4 reported that most of their states have paused their CPP efforts as a result of the stay.

Not Responsive

To: McCabe, Janet[McCabe.Janet@epa.gov]
From: Drinkard, Andrea
Sent: Wed 2/17/2016 2:00:27 AM
Subject: Re: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Not Responsive

From: Drinkard, Andrea
Sent: Tuesday, February 16, 2016 8:38 AM
To: McCabe, Janet <McCabe.Janet@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Miller, Julia <Miller.Julia@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Fraser, Scott <Fraser.Scott@epa.gov>; Dennis, Allison <Dennis.Allison@epa.gov>
Subject: Re: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Not Responsive

On Feb 16, 2016, at 5:34 AM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:

Thanks Andrea.

As you noted, these questions are pretty much what we expected.

I assume/hope OGC will join us for the call with the states.

Sent from my iPhone

On Feb 15, 2016, at 8:43 PM, Drinkard, Andrea <Drinkard.Andrea@epa.gov> wrote:

Email 2 of 2.

Andrea Drinkard

(o) 202.564.1601

Personal Cell/email

Begin forwarded message:

From: "Miller, Julia" <Miller.Julia@epa.gov>
Date: February 15, 2016 at 3:06:53 PM EST
To: "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
Cc: "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>, "Lemon, Mollie" <Lemon.Mollie@epa.gov>, "Torres, Elineth" <Torres.Elineth@epa.gov>
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-Julia

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From: Clint Woods <cwoods@csg.org>
Date: February 15, 2016 at 2:17:39 PM EST
To: "Miller, Julia" <Miller.Julia@epa.gov>
Subject: RE: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

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1. Does EPA expect that, if the Clean Power Plan is ultimately upheld, the deadlines would be tolled by the amount of time the Supreme Court's stay remains in place? If not, why would the Agency depart from recent practice?
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3. Does EPA expect that the stay will change the timelines for any other proposed or final rules, including Paris-related GHG programs?
4. How does the stay affect EPA's FY17 budget request, including \$25 million request for state CPP activities, and FY16 resources/staffing levels? Will staff and resources be redistributed to core air programs during the stay?

Clint Woods

Executive Director

Association of Air Pollution Control Agencies

2760 Research Park Dr.

Lexington, KY 40511

859.244.8040 – office

cwoods@csg.org

<http://www.cleanairact.org>

<image003.jpg>

From: Miller, Julia [<mailto:Miller.Julia@epa.gov>]

Sent: Friday, February 12, 2016 3:50 PM

To: Phil Assmus (passmus@4cleanair.org); Clint Woods; Miles Keogh; Jennifer Murphy; D Terry

Cc: Drinkard, Andrea; Rosenberg, Julie; Mitchell, Ken; Millett, John; Rupp, Mark; Noonan, Jenny; Wortman, Eric; Kornylak, Vera S.; Wood, Anna

Subject: Invitation for states to participate in an EPA stakeholder call on the Clean Power Plan

Dear Colleague:

We are pleased to invite you to participate in a call with Acting Assistant Administrator Janet McCabe to discuss the recent Supreme Court stay of implementation and enforcement of the Clean Power Plan pending judicial review.

Background

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Power Plan rests on strong scientific and legal foundations. During the pendency of the stay, implementation and enforcement of the Clean Power Plan are on hold. EPA will continue to work with states that want to work with us on a voluntary basis.

Date: February 16, 2016

Time: 1:00pm Eastern

Call-in: (877) 290-8017; conference ID 52665151

Please dial in 10 minutes before your call's start time to ensure your participation.

We look forward to your participation. Information about the Clean Power Plan can be found on our website:

www.epa.gov/cleanpowerplan

To: McCabe, Janet[McCabe.Janet@epa.gov]
Cc: Zenick, Elliott[Zenick.Elliott@epa.gov]; Atkinson, Emily[Atkinson.Emily@epa.gov]
From: Drinkard, Andrea
Sent: Fri 2/12/2016 3:43:41 AM
Subject: Re: READ THIS VERSION: REMINDER: EM January-February 2016 -- The Clean Power Plan

Thanks, Janet. Elliott, let me know if you have any issues with the disclaimer language.

Andrea Drinkard

(o) 202.564.1601

(**Personal Cell/email**)

On Feb 11, 2016, at 10:41 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:

I thought this was fine, as long as OGC is ok. Thanks, Andrea.

From: Drinkard, Andrea
Sent: Thursday, February 11, 2016 4:49 PM
To: McCabe, Janet <McCabe.Janet@epa.gov>
Cc: Zenick, Elliott <Zenick.Elliott@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: READ THIS VERSION: REMINDER: EM January-February 2016 -- The Clean Power Plan

Hi Janet,

Your AWMA article is scheduled to be published tomorrow. AWMA suggested putting a disclaimer (as outlined below) in front of all three articles. Apparently, Alex Dunn has updated her article already to reflect the stay, so they will likely change the text to read that some edits have been made.

With that in mind, I think that we should at least try to update the article with some of key messages at the beginning. Please let me know if you agree, or if you would like to leave it as is with the disclaimer. PNM is not planning to update their article.

If you do want edits to either your article (I can mock up some edits in the AM) or to the disclaimer language below, please let me know ASAP so that I can run the appropriate traps with AWMA.

Thanks!

From: Kinsman, John [<mailto:JKinsman@eei.org>]
Sent: Thursday, February 11, 2016 3:48 PM
To: adunn@ecos.org; Maureen.Gannon@pnmresources.com; Drinkard, Andrea
<Drinkard.Andrea@epa.gov>
Cc: Lisa Bucher <LBucher@AWMA.ORG>; jkinsman@eei.org
Subject: RE: REMINDER: EM January-February 2016 -- The Clean Power Plan
Importance: High

Alex, Andrea and Maureen –

Below please find an attempt to address the SCOTUS CPP stay in the beginning of the Introduction to the January-February issue of EM on the Clean Power Plan. Lisa thought that this might allow us to address this in one place. Lisa asks that I send this to you for your review and “to help keep things moving” toward her intended publication of the issue tomorrow. If you have any comments, please send them around “reply to all” – thanks.

John Kinsman

The Clean Power Plan ... Pause

On February 8, the Supreme Court, in a 5:4 decision, granted a stay, effective immediately, of the U.S. Environmental Protection Agency's Clean Power Plan (CPP) to limit greenhouse gas (GHGs) emission from existing power plants. The September 6, 2016 deadline to file state plans and other rule requirements are now on hold. The order does not elaborate on the Supreme Court's reasoning for the stay.

This stay extends through the litigation, *West Virginia, et al. v. EPA, et al.*, including any Supreme Court review. Oral argument in the underlying case is scheduled for June 2-3 before the D.C. Circuit Court of Appeals so a final decision by that court is expected before the end of the year. However, if the eventual D.C. Circuit decision is appealed to the Supreme Court (as is likely) and that court hears the case, a final decision is not likely before mid-2017.

As a result, the ultimate status of the CPP and GHG regulation under the Clean Air Act is unclear, and next steps will be dictated by judicial review. As expected, early reactions to the Supreme Court decision are diverse and wide-ranging.

This issue of EM, which is going to press days after the Supreme Court decision, addresses EPA's final CPP, along with the proposed federal plan and model trading rules to implement the CPP. EPA describes the CPP and the two major affected stakeholder groups—the states and the electric power sector—provide some reactions. These articles were crafted prior to the Supreme Court stay but nevertheless present the program in review and raise key issues associated with the final rule and its implementation.

<This is followed by short summaries of the three articles.>

John Kinsman

Sr. Director, Environment

Edison Electric Institute

701 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

202/508-5711 (p)

202/255-9531 (cell)

202/508-5150 (f)

jkinsman@eei.org

To: McCabe, Janet[McCabe.Janet@epa.gov]
From: Stewart, Lori
Sent: Wed 2/10/2016 3:01:03 AM
Subject: Re: Clean Power Plan

OK, so sorry about this news

Sent from my iPhone

On Feb 9, 2016, at 9:51 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:

Peter said we could have this CPP meeting from 10-10:30 and then MATS from 10:30-11.

Could you please send out a scheduler to the addressees on my note below first thing in the morning? Thanks.

From: McCabe, Janet
Sent: Tuesday, February 09, 2016 9:50 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Adamantiades, Mikhail <Adamantiades.Mikhail@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; John Millett <Millett.John@epa.gov>; Stewart, Lori <Stewart.Lori@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Jones, Toni <Jones.Toni@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>; Rosenberg, Julie <Rosenberg.Julie@epa.gov>
Subject: Clean Power Plan

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I am asking Emily to send out an invite to a call tomorrow (Wednesday) morning at 10 for the OAR and OGC CPP team to talk about the decision and next steps. Please feel free to include others not on this email. I've attached a couple of items below: the statement the White House put out tonight; the brief following statement EPA put out tonight; and an eloquent note from Avi to his staff, which I heartily endorse.

--Janet

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

February 9, 2016

Statement by the Press Secretary

We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation proceeds. The Clean Power Plan is based on a strong legal and technical foundation, gives States the time and flexibility they need to develop tailored, cost-effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change. We remain confident that we will prevail on the merits. Even while the litigation proceeds, EPA has indicated it will work with states that choose to continue plan development and will prepare the tools those states will need. At the same time, the Administration will continue to take aggressive steps to make forward progress to reduce carbon

emissions.

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EPA STATEMENT:

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From: Garbow, Avi

Sent: Tuesday, February 09, 2016 9:21 PM

To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>

Cc: McCabe, Janet <McCabe.Janet@epa.gov>

Subject: Clean Power Plan

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Flynn, Mike[Flynn.Mike@epa.gov]
From: McCabe, Janet
Sent: Wed 2/10/2016 4:40:25 PM
Subject: RE: Clean Power Plan

Yeah. It's a bummer, but we will move onward and upward.

From: Flynn, Mike
Sent: Wednesday, February 10, 2016 9:22 AM
To: McCabe, Janet <McCabe.Janet@epa.gov>
Subject: Re: Clean Power Plan

Thanks for sharing Janet. I heard about this late yesterday but didn't have any of the background. Certainly hope we can move beyond this.

Mike

Sent from my iPhone

On Feb 10, 2016, at 3:59 AM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:

I wanted to share with you--leaders of oar offices not directly involved in the CPP --the messages that Avi and I sent out last night to the team, as well as the formal statements issued by the White House and EPA.

This is obviously disappointing, but it is a procedural ruling, and we will of course push on with our defense of the rule.

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To: "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Niebling, William" <Niebling.William@epa.gov>, "Jordan, Deborah" <Jordan.Deborah@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Wood, Anna" <Wood.Anna@epa.gov>, "Kornylak, Vera S." <Kornylak.Vera@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Harvey, Reid" <Harvey.Reid@epa.gov>, "Adamantiades, Mikhail" <Adamantiades.Mikhail@epa.gov>, "Garbow, Avi" <Garbow.Avi@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Jordan, Scott" <Jordan.Scott@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>, "Shenkman, Ethan" <Shenkman.Ethan@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>, John Millett <Millett.John@epa.gov>, "Stewart, Lori" <Stewart.Lori@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Jones, Toni" <Jones.Toni@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Noonan, Jenny" <Noonan.Jenny@epa.gov>, "Santiago, Juan" <Santiago.Juan@epa.gov>, "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>

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Cc: McCabe, Janet <McCabe.Janet@epa.gov>
Subject: Clean Power Plan

Folks,

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Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Flynn, Mike[Flynn.Mike@epa.gov]; DeMocker, Jim[DeMocker.Jim@epa.gov]; Saltman, Tamara[Saltman.Tamara@epa.gov]; Shoaff, John[Shoaff.John@epa.gov]; Salgado, Omayra[Salgado.Omayra@epa.gov]; Grundler, Christopher[grundler.christopher@epa.gov]; Hengst, Benjamin[Hengst.Benjamin@epa.gov]; Cook, Leila[cook.leila@epa.gov]; Shaw, Betsy[Shaw.Betsy@epa.gov]
From: McCabe, Janet
Sent: Wed 2/10/2016 11:59:47 AM
Subject: Fwd: Clean Power Plan

I wanted to share with you--leaders of oar offices not directly involved in the CPP --the messages that Avi and I sent out last night to the team, as well as the formal statements issued by the White House and EPA.

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General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Atkinson, Emily[Atkinson.Emily@epa.gov]; Stewart, Lori[Stewart.Lori@epa.gov]
Cc: Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]
From: McCabe, Janet
Sent: Wed 2/10/2016 2:51:34 AM
Subject: FW: Clean Power Plan

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Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

From: Zawlocki, Chris
Location: EPA HQ - WJC North 3442H,
Importance: Normal
Subject: Regional Administrators' Teleconference
Start Date/Time: Thur 4/7/2016 6:00:00 PM
End Date/Time: Thur 4/7/2016 7:00:00 PM

Conf Code

[Agenda RA Call 7apr2016.docx](#)
[GM Quick Facts C&H 3.31.16.docx](#)
[TPs_FinalRelease_CHA_draft_2016-04-01.docx](#)
[Qs on CPP SCOTUS for regions April 2016.docx](#)

For Headquarters people—note room change to WJC North 3415

Update: Added updated file on Qs on CPP SCOTUS 4-6

Adding attachments and agenda for RA call.

Also adding some additional names from Air office (Steve Page, Peter Tsirigotis, Anna Wood, Vera Kornylak, Greg Green, Jan Cortelyou, Juan Santiago).

Adding Bob Kaplan. 3.2.16. kj. Adding Janet McCabe 3.23.2016 kj; Adding Lorie Schmidt 3.25.2016 kj Adding Eric Wortman, Jenny Noonan, Andrea Drinkard, and Chris Zawlocki 4.1.2016. kj 12:23pm. And...Joe Goffman, William Niebling, Sarah Dunham and Reid Harvey.

Regional Administrators' Teleconference

The Regional Administrators' Teleconference tentatively meets biweekly on Thursdays from 2:00 to 3:00 PM eastern time. Headquarters staff and visitors to the Washington, D.C. office are welcome to join Regional Operations in WJC North 3442H. The call-in number is

Conf Code

Please see below for the Regional Administrator that is scheduled to lead the call. If the region leading the teleconference cannot attend, please call Regional Operations at 202-564-3100. Thank you

<u>Date</u>	<u>Lead</u>
March 10	Region 8
March 24	Region 7
April 7	Region 6
April 21	Region 5

[Qs on CPP SCOTUS for regions April 2016.docx](#) [Agenda RA Call 7apr2016.docx](#)
[GM Quick Facts C&H 3.31.16.docx](#) [TPs_FinalRelease_CHA_draft_2016-04-01.docx](#)

To: Harrison, Melissa[Harrison.Melissa@epa.gov]; Distefano, Nichole[DiStefano.Nichole@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov]
Cc: Millett, John[Millett.John@epa.gov]; Niebling, William[Niebling.William@epa.gov]
From: Purchia, Liz
Sent: Mon 3/21/2016 8:11:20 PM
Subject: RE: McConnell letter to states re CPP

I'm good

From: Harrison, Melissa
Sent: Monday, March 21, 2016 4:11 PM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Purchia, Liz <Purchia.Liz@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Niebling, William <Niebling.William@epa.gov>
Subject: RE: McConnell letter to states re CPP

I'd really like to get something to Tim for his story. What do we think about below? Nichole-any update on the letter?

EPA remains fully confident in the legal merits of the Clean Power Plan. While the stay is in place EPA will not take any action to implement or enforce the it. However, the stay does not stop states, tribes, or utilities from continuing to act on climate. In fact, many have already said they're going to keep moving forward. The last year has been an incredible one for progress on climate and clean energy – with major milestones both domestically and internationally, and tremendous momentum in the transition of our energy sector here in the United States. These market signals speak for themselves.

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Personal Cell/email

Harrison.Melissa@epa.gov

From: Distefano, Nichole
Sent: Monday, March 21, 2016 2:54 PM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Purchia, Liz <Purchia.Liz@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Niebling, William <Niebling.William@epa.gov>
Subject: RE: McConnell letter to states re CPP

I am not sure we have actually received the letter yet. I will check but I have not seen.

Nichole Distefano

Associate Administrator

Office of Congressional and Intergovernmental Relations

Environmental Protection Agency

(202) 564-5200

Distefano.Nichole@epa.gov

From: Drinkard, Andrea
Sent: Monday, March 21, 2016 2:53 PM
To: Purchia, Liz <Purchia.Liz@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>; Niebling, William <Niebling.William@epa.gov>
Subject: RE: McConnell letter to states re CPP

Adding William.

From: Purchia, Liz
Sent: Monday, March 21, 2016 2:45 PM
To: Harrison, Melissa <Harrison.Melissa@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: Re: McConnell letter to states re CPP

Yes, don't you think we should point to why we did this rule in the first place?

Liz Purchia

U.S. EPA

202-564-6691

Personal Cell/email

On Mar 21, 2016, at 2:33 PM, Harrison, Melissa <Harrison.Melissa@epa.gov> wrote:

Hey team-do we want to respond or usual confirm and will respond? Thanks! Melissa

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Personal Cell/email

Harrison.Melissa@epa.gov

Begin forwarded message:

From: Timothy Cama <tcama@thehill.com>

Date: March 21, 2016 at 2:25:50 PM EDT
To: "Harrison, Melissa" <harrison.melissa@epa.gov>
Subject: McConnell letter to states re CPP

Hey Melissa-

Do you guys want to comment on this new letter from
McConnell? http://www.mcconnell.senate.gov/public/?a=Files.Serve&File_id=6AB51ED1-3638-4442-85B0-3C56D721861B

Thanks!

--

Timothy Cama, Staff writer

The Hill

(202) 695-6245 | www.thehill.com

Telegram: [trcama](https://t.me/trcama) (bit.ly/1TRWpSn)

To: Distefano, Nichole[DiStefano.Nichole@epa.gov]; Drinkard, Andrea[Drinkard.Andrea@epa.gov]; Purchia, Liz[Purchia.Liz@epa.gov]
Cc: Millett, John[Millett.John@epa.gov]; Niebling, William[Niebling.William@epa.gov]
From: Harrison, Melissa
Sent: Mon 3/21/2016 8:10:42 PM
Subject: RE: McConnell letter to states re CPP

I'd really like to get something to Tim for his story. What do we think about below? Nichole-any update on the letter?

EPA remains fully confident in the legal merits of the Clean Power Plan. While the stay is in place EPA will not take any action to implement or enforce the it. However, the stay does not stop states, tribes, or utilities from continuing to act on climate. In fact, many have already said they're going to keep moving forward. The last year has been an incredible one for progress on climate and clean energy – with major milestones both domestically and internationally, and tremendous momentum in the transition of our energy sector here in the United States. These market signals speak for themselves.

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Personal Cell/email

Harrison.Melissa@epa.gov

From: Distefano, Nichole
Sent: Monday, March 21, 2016 2:54 PM
To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Purchia, Liz <Purchia.Liz@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Niebling, William <Niebling.William@epa.gov>
Subject: RE: McConnell letter to states re CPP

I am not sure we have actually received the letter yet. I will check but I have not seen.

Nichole Distefano

Associate Administrator

Office of Congressional and Intergovernmental Relations

Environmental Protection Agency

(202) 564-5200

Distefano.Nichole@epa.gov

From: Drinkard, Andrea
Sent: Monday, March 21, 2016 2:53 PM
To: Purchia, Liz <Purchia.Liz@epa.gov>; Harrison, Melissa <Harrison.Melissa@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>; Niebling, William <Niebling.William@epa.gov>
Subject: RE: McConnell letter to states re CPP

Adding William.

From: Purchia, Liz
Sent: Monday, March 21, 2016 2:45 PM
To: Harrison, Melissa <Harrison.Melissa@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: Re: McConnell letter to states re CPP

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Liz Purchia

U.S. EPA

202-564-6691

Personal Cell/email

On Mar 21, 2016, at 2:33 PM, Harrison, Melissa <Harrison.Melissa@epa.gov> wrote:

Hey team-do we want to respond or usual confirm and will respond? Thanks! Melissa

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Personal Cell/email

Harrison.Melissa@epa.gov

Begin forwarded message:

From: Timothy Cama <tcama@thehill.com>
Date: March 21, 2016 at 2:25:50 PM EDT
To: "Harrison, Melissa" <harrison.melissa@epa.gov>
Subject: McConnell letter to states re CPP

Hey Melissa-

Do you guys want to comment on this new letter from
McConnell? http://www.mcconnell.senate.gov/public/?a=Files.Serve&File_id=6AB51ED1-3638-4442-85B0-3C56D721861B

Thanks!

--

Timothy Cama, Staff writer

The Hill

(202) 695-6245 | www.thehill.com

Telegram: [trcama](https://t.me/trcama) (bit.ly/1TRWpSn)

To: Lubetsky, Jonathan[Lubetsky.Jonathan@epa.gov]; Ashley, Jackie[Ashley.Jackie@epa.gov];
Terry, Sara[Terry.Sara@epa.gov]; Ashley, Jackie[Ashley.Jackie@epa.gov]
Cc: Niebling, William[Niebling.William@epa.gov]
From: Bailey, KevinJ
Sent: Mon 3/7/2016 5:07:44 PM
Subject: States and CPP

All,

Whitehouse's staff checked in and wants to know how accurate E&E's list of where states stand on the CPP is. The Senator is interested in getting a picture of which states are still planning on moving forward with their plans, even during the stay. The link to E&E's CPP Hub is below.

http://www.eenews.net/interactive/clean_power_plan/#planning_status_chart

Kevin J. Bailey

Congressional Liaison/Air Team

Office of Congressional Affairs

U.S. Environmental Protection Agency

(o) 202.564.2998

(f) 202.501.0144

To: Dennis, Allison[Dennis.Allison@epa.gov]
Cc: Rim, Elisa[Rim.Elisa@epa.gov]; Evarts, Dale[Evarts.Dale@epa.gov]; Schultz, Rebecca[Schultz.Rebecca@epa.gov]; Bremer, Kristen[Bremer.Kristen@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Newberg, Cindy[Newberg.Cindy@epa.gov]
From: Schreifels, Jeremy
Sent: Tue 2/23/2016 9:25:51 AM
Subject: Fwd: For your review: Janet's Domestic Policy Dialogue CPP/CAP Powerpoint Slides and Talkers
[China AQ-Climate Backgrounder_20160211 HFC EDITS.docx](#)
[ATT00001.htm](#)
[CPP Domestic Policy Dialogue V1 HFC EDITS.pptx](#)
[ATT00002.htm](#)

Here are some comments on the DPD materials. I'm concerned about the limited time available (about 20 minutes) and the number of slides. I think we can safely remove some of the slides — slides 9 and 10 — because the relevant messaging is covered in other slides.

Thanks,
Jeremy

To: Schultz, Rebecca[Schultz.Rebecca@epa.gov]; Dennis, Allison[Dennis.Allison@epa.gov]; Schreifels, Jeremy[Schreifels.Jeremy@epa.gov]; Bremer, Kristen[Bremer.Kristen@epa.gov]; Evarts, Dale[Evarts.Dale@epa.gov]
Cc: Niebling, William[Niebling.William@epa.gov]; Newberg, Cindy[Newberg.Cindy@epa.gov]
From: Rim, Elisa
Sent: Mon 2/22/2016 11:15:45 PM
Subject: RE: For your review: Janet's Domestic Policy Dialogue CPP/CAP Powerpoint Slides and Talkers
China AQ-Climate Backgrounder_20160211 HFC EDITS.docx
CPP Domestic Policy Dialogue V1 HFC EDITS.pptx

Attached are our HFC additions/edits to the slides and talking points. Let us know if you have any questions. Thanks!

Elisa Rim

U.S. Environmental Protection Agency - Stratospheric Protection Division

+1 202.343.9947 - rim.elisa@epa.gov

1200 Pennsylvania Ave., NW - Mail Code 6205T - Washington, D.C. 20460

From: Schultz, Rebecca
Sent: Monday, February 22, 2016 6:10 PM
To: Dennis, Allison <Dennis.Allison@epa.gov>; Rim, Elisa <Rim.Elisa@epa.gov>; Schreifels, Jeremy <Schreifels.Jeremy@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Evarts, Dale <Evarts.Dale@epa.gov>
Cc: Niebling, William <Niebling.William@epa.gov>
Subject: RE: For your review: Janet's Domestic Policy Dialogue CPP/CAP Powerpoint Slides and Talkers

I ran out of time, but here a couple general edits to the intro language. I would like to take a closer look yet to see if we might be able to generate some points around revenue decoupling and green dispatch – which while not part of CPP per se, are important pieces of their power sector reform agenda which we want to reference. Best, Rebecca

From: Dennis, Allison

Sent: Saturday, February 20, 2016 11:26 PM

To: Rim, Elisa <Rim.Elisa@epa.gov>; Schreifels, Jeremy <Schreifels.Jeremy@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Evarts, Dale <Evarts.Dale@epa.gov>; Schultz, Rebecca <Schultz.Rebecca@epa.gov>

Cc: Niebling, William <Niebling.William@epa.gov>

Subject: For your review: Janet's Domestic Policy Dialogue CPP/CAP Powerpoint Slides and Talkers

Importance: High

Sorry it took me so long to get these out to you all. If you could be so kind, I'd love to get your feedback by Monday COB so that I could book these for Janet's review Tuesday night.

To: Dennis, Allison[Dennis.Allison@epa.gov]; Rim, Elisa[Rim.Elisa@epa.gov]; Schreifels, Jeremy[Schreifels.Jeremy@epa.gov]; Bremer, Kristen[Bremer.Kristen@epa.gov]; Evarts, Dale[Evarts.Dale@epa.gov]
Cc: Niebling, William[Niebling.William@epa.gov]
From: Schultz, Rebecca
Sent: Mon 2/22/2016 11:10:16 PM
Subject: RE: For your review: Janet's Domestic Policy Dialogue CPP/CAP Powerpoint Slides and Talkers
McCabe talking points DPD V1x ras.docx

I ran out of time, but here a couple general edits to the intro language. I would like to take a closer look yet to see if we might be able to generate some points around revenue decoupling and green dispatch – which while not part of CPP per se, are important pieces of their power sector reform agenda which we want to reference. Best, Rebecca

From: Dennis, Allison
Sent: Saturday, February 20, 2016 11:26 PM
To: Rim, Elisa <Rim.Elisa@epa.gov>; Schreifels, Jeremy <Schreifels.Jeremy@epa.gov>; Bremer, Kristen <Bremer.Kristen@epa.gov>; Evarts, Dale <Evarts.Dale@epa.gov>; Schultz, Rebecca <Schultz.Rebecca@epa.gov>
Cc: Niebling, William <Niebling.William@epa.gov>
Subject: For your review: Janet's Domestic Policy Dialogue CPP/CAP Powerpoint Slides and Talkers
Importance: High

Sorry it took me so long to get these out to you all. If you could be so kind, I'd love to get your feedback by Monday COB so that I could book these for Janet's review Tuesday night.

To: Niebling, William[Niebling.William@epa.gov]; LaRue, Steven[LaRue.Steven@epa.gov]
Cc: Cyran, Carissa[Cyran.Carissa@epa.gov]
From: Lubetsky, Jonathan
Sent: Mon 2/22/2016 7:32:01 PM
Subject: RE: Hearing prep

Ex. 5 - Deliberative

-----Original Message-----

From: Niebling, William
Sent: Monday, February 22, 2016 2:29 PM
To: LaRue, Steven <LaRue.Steven@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>
Subject: RE: Hearing prep

++

Ex. 5 - Deliberative

-----Original Message-----

From: LaRue, Steven
Sent: Monday, February 22, 2016 2:00 PM
To: Niebling, William <Niebling.William@epa.gov>
Subject: RE: Hearing prep

In light of that call this afternoon do you have a better sense of what might be helpful? Let us know if you need anything concrete.

-----Original Message-----

From: Niebling, William
Sent: Monday, February 22, 2016 11:27 AM
To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>; LaRue, Steven <LaRue.Steven@epa.gov>
Subject: Hearing prep

Janet asked for a page or two on our budget request, as well as anything prepared on spending money on CPP in light of stay.

-Wm.

To: Niebling, William[Niebling.William@epa.gov]; Lubetsky, Jonathan[Lubetsky.Jonathan@epa.gov]; Cyran, Carissa[Cyran.Carissa@epa.gov]
Cc: Walters, Margaret[Walters.Margaret@epa.gov]; Hyde, Courtney[Hyde.Courtney@epa.gov]; Salgado, Omayra[Salgado.Omayra@epa.gov]
From: LaRue, Steven
Sent: Mon 2/22/2016 4:31:46 PM
Subject: RE: Hearing prep
Messaging on CPP Budget

Hi William,

Take a look at the message I pulled together for Betsy to see if that might help you out for now - we might have a better idea of what the precise messaging is in light of the stay after the call between Joe Goffman and SAC coming up here shortly. I can take that information back and refine a few talkers ASAP.

- Steve

-----Original Message-----

From: Niebling, William
Sent: Monday, February 22, 2016 11:27 AM
To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Cyran, Carissa <Cyran.Carissa@epa.gov>; LaRue, Steven <LaRue.Steven@epa.gov>
Subject: Hearing prep

Janet asked for a page or two on our budget request, as well as anything prepared on spending money on CPP in light of stay.

-Wm.

To: Niebling, William[Niebling.William@epa.gov]
From: Lubetsky, Jonathan
Sent: Mon 2/22/2016 2:28:29 PM
Subject: RE: other topics
[CPP stay intl TPs.docx](#)
[4a. CPP SCOTUS Stay Q&A 02 11 16 830am.docx](#)

I believe so, I need to confirm who is attending. We have two documents attached. Do you think we should add Paul Gunning to the invite?

From: Niebling, William
Sent: Monday, February 22, 2016 9:27 AM
To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>
Subject: other topics

Are we set for the 1230pm CPP/Paris session?

William L. Niebling

Office of Air and Radiation

U.S. Environmental Protection Agency

tel: 202.564.9616

fax: 202.564.1408

To: Niebling, William[Niebling.William@epa.gov]; Bailey, KevinJ[Bailey.KevinJ@epa.gov]
From: Lubetsky, Jonathan
Sent: Mon 2/22/2016 12:40:24 PM
Subject: RE: Clean Power Plan Stay Questions
4a. CPP SCOTUS Stay Q&A 02 11 16 830am.docx

Here is what I have.

-----Original Message-----

From: Niebling, William
 Sent: Friday, February 19, 2016 4:08 PM
 To: Bailey, KevinJ <Bailey.KevinJ@epa.gov>
 Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>
 Subject: Re: Clean Power Plan Stay Questions

The order says within it. Jonathan can help get OGC's or OAR comms' TPs.

> On Feb 19, 2016, at 1:33 PM, Bailey, KevinJ <Bailey.KevinJ@epa.gov> wrote:

>

>

> Hey William,

>

> See Pat's email below. Can you help clarify this?

>

> Kevin J. Bailey

> Congressional Liaison/Air Team

> Office of Congressional Affairs

> U.S. Environmental Protection Agency

> (o): 202.564.2998

> (f): 202.501.0144

>

>

> _____
 > From: Haman, Patricia

> Sent: Friday, February 19, 2016 11:55 AM

> To: Bailey, KevinJ

> Cc: Bowles, Jack

> Subject: Clean Power Plan Stay Questions

>

> Hi Kevin: After this morning's panel the woman from the National League of Cities asked Jack and me about the stay. Is it only until the Supreme Court rules or if there is a remand, does it stay in place until the lower court rules? Would the lower court have to issue its own stay?

>

> I haven't seen anything on this. Can you check to see if OAR/OGC has put anything together on this question? It would be good if it is something Jack could forward to the NLC.

>

> They are having a conference next week so they want to be clear on how it works.

>

> Thanks, Pat

>

> Sent from my iPhone

To: Rim, Elisa[Rim.Elisa@epa.gov]; Schreifels, Jeremy[Schreifels.Jeremy@epa.gov]; Bremer, Kristen[Bremer.Kristen@epa.gov]; Evarts, Dale[Evarts.Dale@epa.gov]; Schultz, Rebecca[Schultz.Rebecca@epa.gov]
Cc: Niebling, William[Niebling.William@epa.gov]
From: Dennis, Allison
Sent: Sun 2/21/2016 4:25:45 AM
Subject: For your review: Janet's Domestic Policy Dialogue CPP/CAP Powerpoint Slides and Talkers
[CPP Domestic Policy Dialogue V1.pptx](#)
[McCabe talking points DPD V1x.docx](#)

Sorry it took me so long to get these out to you all. If you could be so kind, I'd love to get your feedback by Monday COB so that I could book these for Janet's review Tuesday night.

United States Senate

WASHINGTON, DC 20510

March 16, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator McCarthy:

We thank you for your role in developing the Clean Power Plan (CPP) and appreciate the willingness of the Environmental Protection Agency (EPA) to solicit and incorporate public input. We are disappointed that the Supreme Court issued a stay of the rule. Despite the stay, several states (including Minnesota) have already announced that they will continue the planning process for implementation. We hope the EPA will do everything it can under the stay to provide assistance in these efforts. This letter outlines several measures that we believe will help achieve a successful implementation of the CPP.

The CPP plays a significant role in reducing our dependence on fossil-based energy sources and in transitioning our electricity sector to a clean energy future. The CPP will reduce domestic greenhouse gas emissions from the power sector by 32 percent by the year 2030, as compared to 2005 levels. Minnesota has been a leader in deploying renewable energy and energy efficiency technologies, and we are confident that this leadership situates Minnesota well for implementation of the CPP.

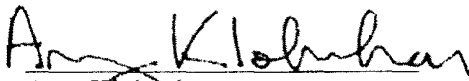
We appreciate the emphasis you have placed on flexibility in the development of the CPP, and your willingness to continue to work with states during the stay of the rule. We hope you will continue to prioritize individual state needs when implementing the rule, without undermining the overall goals. Specifically, we urge you to consider:


- **Alternative paths toward achieving the 2030 target.** As states work to submit their implementation plans, we believe that allowing states some flexibility in the interim targets could reduce the cost of compliance, while maintaining overall emission reductions by 2030.
- **The allocation of allowances obtained from the retirement of fossil fuel generation.** The draft Federal Implementation Plan (FIP) proposes reallocating emission allowances garnered through the retirement of fossil fuel-fired generation after a minimum of two years. We are concerned that this short turnover could have the unintended consequence of incentivizing fossil fuel-fired power plants to remain operating at a lower capacity, thereby increasing overall emissions.
- **The treatment of imported renewable energy generation.** The CPP is definitive that renewable energy generation from Canada, including hydropower, can be used to achieve the state target. However, there is no such guidance in the draft FIP.

We applaud the states that are moving forward with implementation plans, and believe attention to the areas outlined above would strengthen their ability to reduce greenhouse gas emissions. We appreciate the EPA's responsiveness to public comments when adjusting the proposed rule, and hope we can continue to work together to ensure a successful implementation of the final rule.

Thank you for your consideration of this request, and please do not hesitate to contact us with any questions about this letter.

Sincerely,


Amy Klobuchar
United States Senator


Al Franken
United States Senator

To: Niebling, William[Niebling.William@epa.gov]
From: Bailey, KevinJ
Sent: Fri 2/19/2016 5:33:49 PM
Subject: Fw: Clean Power Plan Stay Questions

Hey William,

See Pat's email below. Can you help clarify this?

Kevin J. Bailey
Congressional Liaison/Air Team
Office of Congressional Affairs
U.S. Environmental Protection Agency
(o): 202.564.2998
(f): 202.501.0144

From: Haman, Patricia
Sent: Friday, February 19, 2016 11:55 AM
To: Bailey, KevinJ
Cc: Bowles, Jack
Subject: Clean Power Plan Stay Questions

Hi Kevin: After this morning's panel the woman from the National League of Cities asked Jack and me about the stay. Is it only until the Supreme Court rules or if there is a remand, does it stay in place until the lower court rules? Would the lower court have to issue its own stay?

I haven't seen anything on this. Can you check to see if OAR/OGC has put anything together on this question? It would be good if it is something Jack could forward to the NLC.

They are having a conference next week so they want to be clear on how it works.

Thanks, Pat

Sent from my iPhone

To: Niebling, William[Niebling.William@epa.gov]; Lubetsky, Jonathan[Lubetsky.Jonathan@epa.gov]
From: LaRue, Steven
Sent: Tue 2/16/2016 4:26:31 PM
Subject: RE: Call with Goffman?

Thanks so much, surely the message could affect our responses on budget related inquiries.

- Steve

From: Niebling, William
Sent: Tuesday, February 16, 2016 11:22 AM
To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; LaRue, Steven <LaRue.Steven@epa.gov>
Subject: FW: Call with Goffman?

Just asked to have you two added to this. optional but thought you'd be interested.

From: Walsh, Ed
Sent: Friday, February 12, 2016 1:01 PM
To: Niebling, William <Niebling.William@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: RE: Call with Goffman?

Let me know when we can set this call up for next week. HAC and SAC minority just want to make sure they have an understanding before members come back from recess.

Thanks

Ed

From: Niebling, William
Sent: Wednesday, February 10, 2016 3:04 PM
To: Walsh, Ed <Walsh.Ed@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: Re: Call with Goffman?

Thanks!

On Feb 10, 2016, at 3:03 PM, Walsh, Ed <Walsh.Ed@epa.gov> wrote:

Ok. No problem. I will share the statements.

From: Niebling, William
Sent: Wednesday, February 10, 2016 3:02 PM
To: Walsh, Ed <Walsh.Ed@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: RE: Call with Goffman?

Ed – happy to step out of things and call to chat about this more if you want. But we aren't quite ready to have this discussion as we are still digesting, taking stock, and figuring out what foot to put forward. I think there is a meeting later this afternoon that may make some progress on messaging. We will gladly get back to the appropriations staff as soon as we have had a chance to know what we want to say but I think that is not quite yet. In the meantime, you can share the two statements I've pasted below with them in case they've not yet seen them.

-Wm.

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

February 9, 2016

Statement by the Press Secretary

We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation proceeds. The Clean Power Plan is based on a strong legal and technical foundation, gives States the time and flexibility they need to develop tailored, cost-effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change. We remain confident that we will prevail on the merits. Even while the litigation proceeds, EPA has indicated it will work with states that choose to continue plan development and will prepare the tools those states will need. At the same time, the Administration will continue to take aggressive steps to make forward progress to reduce carbon emissions.

###

EPA STATEMENT:

We're disappointed the rule has been stayed, but you can't stay climate change and you can't stay climate action. Millions of people are demanding we confront the risks posed by climate change. And we will do just that. We believe strongly in this rule and we will continue working with our partners to address carbon pollution.

From: Walsh, Ed
Sent: Wednesday, February 10, 2016 2:51 PM
To: Niebling, William <Niebling.William@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: RE: Call with Goffman?

Absolutely. I am also making sure that Nichole is in the loop.

From: Niebling, William
Sent: Wednesday, February 10, 2016 2:50 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Walsh, Ed <Walsh.Ed@epa.gov>
Cc: Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: RE: Call with Goffman?

Ed – before you offer any times, let me look into one thing, please. will get back to you momentarily.

From: Goffman, Joseph
Sent: Wednesday, February 10, 2016 2:35 PM
To: Walsh, Ed <Walsh.Ed@epa.gov>
Cc: Browne, Cynthia <Browne.Cynthia@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: Re: Call with Goffman?

After 5 best, after 4:15 if need be. Thanks

- Joseph Goffman

Sent from my iPhone

On Feb 10, 2016, at 2:11 PM, Walsh, Ed <Walsh.Ed@epa.gov> wrote:

Hi Joe

I got this request from Senate Democrats and also an earlier one from House Democrats on the SCOTUS ruling. You have any time to get on the phone with them to keep them calm.

Thanks

Ed

From: Zimmerman, Melissa (Appropriations)
[mailto:Melissa_Zimmerman@appro.senate.gov]
Sent: Wednesday, February 10, 2016 2:06 PM
To: Walsh, Ed <Walsh.Ed@epa.gov>
Cc: Rita Culp <rita.culp@mail.house.gov>
Subject: Call with Goffman?

Hey Ed – could we set up a call with Joe Goffman today to talk about the SCOTUS ruling? I am less interested in the rhetoric and legal arguments (plenty to read online), but more interested in the timelines and nuts and bolts of what states will and will not have to do in the interim.

Looping in Rita in case she'd like to join.

Melissa Zimmerman

Clerk, Subcommittee on the Legislative Branch

Professional Staff, Subcommittee on Interior & Environment

Committee on Appropriations

United States Senate

(202) 224-9722

To: Niebling, William[Niebling.William@epa.gov]
From: Distefano, Nichole
Sent: Fri 2/12/2016 6:37:37 PM
Subject: RE: Call with Goffman?

As long as Joe is OK. I am good.

Nichole Distefano

Associate Administrator

Office of Congressional and Intergovernmental Relations

Environmental Protection Agency

(202) 564-5200

Distefano.Nichole@epa.gov

From: Niebling, William
Sent: Friday, February 12, 2016 1:18 PM
To: Distefano, Nichole <DiStefano.Nichole@epa.gov>
Subject: FW: Call with Goffman?

Okay to schedule?

From: Walsh, Ed
Sent: Friday, February 12, 2016 1:01 PM
To: Niebling, William <Niebling.William@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Distefano, Nichole <DiStefano.Nichole@epa.gov>

Subject: RE: Call with Goffman?

Let me know when we can set this call up for next week. HAC and SAC minority just want to make sure they have an understanding before members come back from recess.

Thanks

Ed

From: Niebling, William
Sent: Wednesday, February 10, 2016 3:04 PM
To: Walsh, Ed <Walsh.Ed@epa.gov>
Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>; Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: Re: Call with Goffman?

Thanks!

On Feb 10, 2016, at 3:03 PM, Walsh, Ed <Walsh.Ed@epa.gov> wrote:

Ok. No problem. I will share the statements.

From: Niebling, William
Sent: Wednesday, February 10, 2016 3:02 PM
To: Walsh, Ed <Walsh.Ed@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: RE: Call with Goffman?

Ed – happy to step out of things and call to chat about this more if you want. But we aren't quite ready to have this discussion as we are still digesting, taking stock, and figuring out what foot to put forward. I think there is a meeting later this afternoon that may make some progress on messaging. We will gladly get back to the appropriations staff as soon as we

have had a chance to know what we want to say but I think that is not quite yet. In the meantime, you can share the two statements I've pasted below with them in case they've not yet seen them.

-Wm.

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

February 9, 2016

Statement by the Press Secretary

We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation proceeds. The Clean Power Plan is based on a strong legal and technical foundation, gives States the time and flexibility they need to develop tailored, cost-effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change. We remain confident that we will prevail on the merits. Even while the litigation proceeds, EPA has indicated it will work with states that choose to continue plan development and will prepare the tools those states will need. At the same time, the Administration will continue to take aggressive steps to make forward progress to reduce carbon emissions.

###

EPA STATEMENT:

We're disappointed the rule has been stayed, but you can't stay climate change and you can't stay climate action. Millions of people are demanding we confront the risks posed by climate change. And we will do just that. We believe strongly in this rule and we will continue working with our partners to address carbon pollution.

From: Walsh, Ed
Sent: Wednesday, February 10, 2016 2:51 PM
To: Niebling, William <Niebling.William@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: RE: Call with Goffman?

Absolutely. I am also making sure that Nichole is in the loop.

From: Niebling, William
Sent: Wednesday, February 10, 2016 2:50 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Walsh, Ed <Walsh.Ed@epa.gov>
Cc: Browne, Cynthia <Browne.Cynthia@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: RE: Call with Goffman?

Ed – before you offer any times, let me look into one thing, please. will get back to you momentarily.

From: Goffman, Joseph
Sent: Wednesday, February 10, 2016 2:35 PM
To: Walsh, Ed <Walsh.Ed@epa.gov>

Cc: Browne, Cynthia <Browne.Cynthia@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>
Subject: Re: Call with Goffman?

After 5 best, after 4:15 if need be. Thanks

- Joseph Goffman

Sent from my iPhone

On Feb 10, 2016, at 2:11 PM, Walsh, Ed <Walsh.Ed@epa.gov> wrote:

Hi Joe

I got this request from Senate Democrats and also an earlier one from House Democrats on the SCOTUS ruling. You have any time to get on the phone with them to keep them calm.

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[mailto:Melissa_Zimmerman@appro.senate.gov]
Sent: Wednesday, February 10, 2016 2:06 PM
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Cc: Rita Culp <rita.culp@mail.house.gov>
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Looping in Rita in case she'd like to join.

Melissa Zimmerman

Clerk, Subcommittee on the Legislative Branch

Professional Staff, Subcommittee on Interior & Environment

Committee on Appropriations

United States Senate

(202) 224-9722

To: Niebling, William[Niebling.William@epa.gov]
From: Bailey, KevinJ
Sent: Wed 2/10/2016 3:37:02 PM
Subject: RE: Clean Power Plan

Got it. Thanks.

Kevin J. Bailey

Congressional Liaison/Air Team

Office of Congressional Affairs

U.S. Environmental Protection Agency

(o) 202.564.2998

(f) 202.501.0144

From: Niebling, William
Sent: Wednesday, February 10, 2016 10:35 AM
To: Bailey, KevinJ <Bailey.KevinJ@epa.gov>
Subject: Fwd: Clean Power Plan

You can share the WH statement and our statement with usda and with anyone who inquires. But not Janet's cover message, please.

Begin forwarded message:

From: "McCabe, Janet" <McCabe.Janet@epa.gov>
Date: February 9, 2016 at 9:50:03 PM EST
To: "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Niebling, William" <Niebling.William@epa.gov>, "Jordan, Deborah" <Jordan.Deborah@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Wood, Anna" <Wood.Anna@epa.gov>, "Kornylak, Vera S." <Kornylak.Vera@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Harvey, Reid" <Harvey.Reid@epa.gov>, "Adamantiades, Mikhail" <Adamantiades.Mikhail@epa.gov>, "Garbow, Avi" <Garbow.Avi@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Jordan,

Scott" <Jordan.Scott@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>, "Shenkman, Ethan" <Shenkman.Ethan@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Stewart, Lori" <Stewart.Lori@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Jones, Toni" <Jones.Toni@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Noonan, Jenny" <Noonan.Jenny@epa.gov>, "Santiago, Juan" <Santiago.Juan@epa.gov>, "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>

Subject: Clean Power Plan

Ex. 5 - Deliberative

I am asking Emily to send out an invite to a call tomorrow (Wednesday) morning at 10 for the OAR and OGC CPP team to talk about the decision and next steps. Please feel free to include others not on this email. I've attached a couple of items below: the statement the White House put out tonight; the brief following statement EPA put out tonight; and an eloquent note from Avi to his staff, which I heartily endorse.

--Janet

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EPA STATEMENT:

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From: Garbow, Avi

Sent: Tuesday, February 09, 2016 9:21 PM

To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>

Cc: McCabe, Janet <McCabe.Janet@epa.gov>

Subject: Clean Power Plan

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

From: Wortman, Eric
Location: Conf. Line: **Conf Code** / Passcode: **Conf Code**
Importance: Normal
Subject: CPP Stay: ADD Special Purpose Call
Start Date/Time: Wed 2/10/2016 8:00:00 PM
End Date/Time: Wed 2/10/2016 8:30:00 PM
[15A773-Clean-Power-Plan-stay-order.pdf](#)

Shortening the call by ½ hour, from 3:00 – 3:30 ET.

Special purpose call with Janet, Air Division Directors and HQs regarding last night's SCOTUS stay of the CPP. ADDs may invite CPP APMs and key staff as appropriate. Also including the ORC contact list for those of you involved with CPP. A copy of the stay order is attached.

[15A773-Clean-Power-Plan-stay-order.pdf](#)

To: Bailey, KevinJ[Bailey.KevinJ@epa.gov]
From: Niebling, William
Sent: Wed 2/10/2016 3:35:23 PM
Subject: Fwd: Clean Power Plan

You can share the WH statement and our statement with usda and with anyone who inquires. But not Janet's cover message, please.

Begin forwarded message:

From: "McCabe, Janet" <McCabe.Janet@epa.gov>
Date: February 9, 2016 at 9:50:03 PM EST
To: "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Niebling, William" <Niebling.William@epa.gov>, "Jordan, Deborah" <Jordan.Deborah@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Wood, Anna" <Wood.Anna@epa.gov>, "Kornylak, Vera S." <Kornylak.Vera@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Harvey, Reid" <Harvey.Reid@epa.gov>, "Adamantiades, Mikhail" <Adamantiades.Mikhail@epa.gov>, "Garbow, Avi" <Garbow.Avi@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Jordan, Scott" <Jordan.Scott@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>, "Shenkman, Ethan" <Shenkman.Ethan@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Stewart, Lori" <Stewart.Lori@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Jones, Toni" <Jones.Toni@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Noonan, Jenny" <Noonan.Jenny@epa.gov>, "Santiago, Juan" <Santiago.Juan@epa.gov>, "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>
Subject: Clean Power Plan

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From: Garbow, Avi

Sent: Tuesday, February 09, 2016 9:21 PM

To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>

Cc: McCabe, Janet <McCabe.Janet@epa.gov>

Subject: Clean Power Plan

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Schmidt, Lorie[Schmidt.Lorie@epa.gov]
From: Drinkard, Andrea
Sent: Fri 3/18/2016 4:25:50 PM
Subject: Re: could you please send me

Ah ok, thanks. Back to you ASAP.

Andrea Drinkard
(o) 202.564.1601

Personal Cell/email

On Mar 18, 2016, at 12:25 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

We have been asked to put together talking points for the Administrator for hearing prep to respond to the Inhofe letter.

We were going to draft something here and then send it to William for OAR review.

Lorie Schmidt

Associate General Counsel, Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

From: Drinkard, Andrea
Sent: Friday, March 18, 2016 12:24 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Subject: Re: could you please send me

Yep. In a meeting but will be back at my desk at 1. What's the audience for the statements? Internal or external?

Andrea Drinkard

(o) 202.564.1601

Personal Cell/email

On Mar 18, 2016, at 12:23 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Also anything on compliance deadlines and the effect of the stay?

Lorie Schmidt

Associate General Counsel, Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

From: Schmidt, Lorie

Sent: Friday, March 18, 2016 12:22 PM

To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Subject: could you please send me

The talking points that we are using to respond to questions on what we are doing on CPP during the pendency of the stay?

Thanks

Lorie

Lorie Schmidt

Associate General Counsel, Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

To: Williamson, Timothy[Williamson.Tim@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]; Schramm, Daniel[Schramm.Daniel@epa.gov]; Marks, Matthew[Marks.Matthew@epa.gov]; Roder, Aileen[Roder.Aileen@epa.gov]; Pilchen, Zach[Pilchen.Zach@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Silverman, Steven[silverman.steven@epa.gov]; Vijayan, Abi[Vijayan.Abi@epa.gov]; Odendahl, Steve[Odendahl.Steve@epa.gov]; Greenglass, Nora[Greenglass.Nora@epa.gov]; Bond, Alexander[Bond.Alexander@epa.gov]; Conrad, Daniel[conrad.daniel@epa.gov]
From: Zenick, Elliott
Sent: Wed 2/10/2016 3:13:17 PM
Subject: FW: Clean Power Plan

From: McCabe, Janet
Sent: Tuesday, February 09, 2016 9:50 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Jordan, Deborah <Jordan.Deborah@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Page, Steve <Page.Steve@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Wood, Anna <Wood.Anna@epa.gov>; Kornylak, Vera S. <Kornylak.Vera@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>; Harvey, Reid <Harvey.Reid@epa.gov>; Adamantiades, Mikhail <Adamantiades.Mikhail@epa.gov>; Garbow, Avi <Garbow.Avi@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Millett, John <Millett.John@epa.gov>; Stewart, Lori <Stewart.Lori@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Jones, Toni <Jones.Toni@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Noonan, Jenny <Noonan.Jenny@epa.gov>; Santiago, Juan <Santiago.Juan@epa.gov>; Rosenberg, Julie <Rosenberg.Julie@epa.gov>
Subject: Clean Power Plan

Ex. 5 - Deliberative

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From: Garbow, Avi

Sent: Tuesday, February 09, 2016 9:21 PM

To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>

Cc: McCabe, Janet <McCabe.Janet@epa.gov>

Subject: Clean Power Plan

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Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Roder, Aileen[Roder.Aileen@epa.gov]; Marks, Matthew[Marks.Matthew@epa.gov]; Silverman, Steven[silverman.steven@epa.gov]; Pilchen, Zach[Pilchen.Zach@epa.gov]; Schramm, Daniel[Schramm.Daniel@epa.gov]; Odendahl, Steve[Odendahl.Steve@epa.gov]; Vijayan, Abi[Vijayan.Abi@epa.gov]; Williamson, Timothy[Williamson.Tim@epa.gov]
Cc: Bond, Alexander[Bond.Alexander@epa.gov]; Greenglass, Nora[Greenglass.Nora@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]
From: Zenick, Elliott
Sent: Wed 2/10/2016 12:28:49 PM
Subject: Re: Clean Power Plan

All Janet is planning a call at 10. Will let you know when I have more detail.

Sent from my iPhone

On Feb 9, 2016, at 10:03 PM, Zenick, Elliott <Zenick.Elliott@epa.gov> wrote:

Forwarding at Avi's request.

From: Garbow, Avi
Sent: Tuesday, February 09, 2016 9:21 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>
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Avi Garbow

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U.S. Environmental Protection Agency

(202) 564-8040

To: Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]
From: Drinkard, Andrea
Sent: Wed 2/10/2016 2:38:31 AM
Subject: Fwd: URGENT: Clean Power Plan

FYI

Andrea Drinkard
 (o) 202.564.1601

Personal Cell/email

Begin forwarded message:

From: "Harrison, Melissa" <Harrison.Melissa@epa.gov>
Date: February 9, 2016 at 9:27:13 PM EST
To: "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Hart, Daniel" <Hart.Daniel@epa.gov>, "Davis, Jay" <Davis.Jay@epa.gov>, PADs and Alternates <PADs_and_Alternates@epa.gov>, Comm Directors and Alternates <Comm_Directors_and_Alternates@epa.gov>
Cc: "Hull, George" <Hull.George@epa.gov>, "Jones, Enesta" <Jones.Enesta@epa.gov>, "Conger, Nick" <Conger.Nick@epa.gov>, "Purchia, Liz" <Purchia.Liz@epa.gov>, "Allen, Laura" <Allen.Laura@epa.gov>
Subject: RE: URGENT: Clean Power Plan

Good evening, below is our statement on tonight's Supreme Court decision on the Clean Power Plan. I have also included the White House statement. Please continue to hold on social media and send all media inquiries to me. Sincerely, Melissa

EPA Statement:

We're disappointed the rule has been stayed, but you can't stay climate change and you can't stay climate action. Millions of people are demanding we confront the risks posed by climate change. And we will do just that. We believe strongly in this rule and we will continue working with our partners to address carbon pollution.

Statement by White House Press Secretary:

We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation proceeds. The Clean Power Plan is based on a strong legal and technical foundation, gives States the time and flexibility they need to develop tailored, cost-

effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change. We remain confident that we will prevail on the merits. Even while the litigation proceeds, EPA has indicated it will work with states that choose to continue plan development and will prepare the tools those states will need. At the same time, the Administration will continue to take aggressive steps to make forward progress to reduce carbon emissions.

###

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Personal Cell/email

Harrison.Melissa@epa.gov

From: Harrison, Melissa

Sent: Tuesday, February 09, 2016 7:53 PM

To: Orquina, Jessica <Orquina.Jessica@epa.gov>; Hart, Daniel <Hart.Daniel@epa.gov>;

Davis, Jay <Davis.Jay@epa.gov>; PADs and Alternates

<PADs_and_Alternates@epa.gov>; Comm Directors and Alternates

<Comm_Directors_and_Alternates@epa.gov>

Cc: Hull, George <Hull.George@epa.gov>; Jones, Enesta <Jones.Enesta@epa.gov>;

Conger, Nick <Conger.Nick@epa.gov>; Purchia, Liz <Purchia.Liz@epa.gov>; Allen, Laura

<Allen.Laura@epa.gov>

Subject: URGENT: Clean Power Plan

Good evening,

Please send all media inquiries on the Clean Power Plan to me.

Please also ensure no social media about the Clean Power Plan is scheduled until you receive further guidance from OPA.

Thanks,

Melissa

Melissa J. Harrison

Press Secretary

U.S. Environmental Protection Agency

Office: (202) 564-8421

Personal Cell/email

Harrison.Melissa@epa.gov

To: Schmidt, Lorie[Schmidt.Lorie@epa.gov]
From: Zenick, Elliott
Sent: Tue 2/9/2016 9:54:33 PM
Subject: Re: CPP misc

SG thinks probably end of this week or beginning of next. We can put the list together.

Ex. 5 - Deliberative

Sent from my iPhone

On Feb 9, 2016, at 4:09 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Region eight mentioned that they would like a listing of which attorneys in OGC are responsible for which parts of the CPP. This seemed like a good idea to pull together and send to other regions as well. Thoughts?

Second, at some point I would like to hear the answer to the question the reporter raised about rural co-ops costs under CPP.

Third – do we have any idea from DOJ regarding timing of Supreme Court stay decision?

Thanks

Lorie

Lorie J. Schmidt
Associate General Counsel for Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Sent from my iPhone

To: Drinkard, Andrea[Drinkard.Andrea@epa.gov]
From: Schmidt, Lorie
Sent: Fri 3/18/2016 4:25:04 PM
Subject: RE: could you please send me

We have been asked to put together talking points for the Administrator for hearing prep to respond to the Inhofe letter.

We were going to draft something here and then send it to William for OAR review.

Lorie Schmidt

Associate General Counsel, Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

From: Drinkard, Andrea
Sent: Friday, March 18, 2016 12:24 PM
To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>
Subject: Re: could you please send me

Yep. In a meeting but will be back at my desk at 1. What's the audience for the statements? Internal or external?

Andrea Drinkard

(o) 202.564.1601

Personal Cell/email

On Mar 18, 2016, at 12:23 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Also anything on compliance deadlines and the effect of the stay?

Lorie Schmidt

Associate General Counsel, Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

From: Schmidt, Lorie

Sent: Friday, March 18, 2016 12:22 PM

To: Drinkard, Andrea <Drinkard.Andrea@epa.gov>

Subject: could you please send me

The talking points that we are using to respond to questions on what we are doing on CPP during the pendency of the stay?

Thanks

Lorie

Lorie Schmidt

Associate General Counsel, Air and Radiation

Office of General Counsel

US Environmental Protection Agency

(202)564-1681

To: Hall, William[Hall.William@epa.gov]
From: Schmidt, Lorie
Sent: Fri 3/4/2016 4:55:23 PM
Subject: RE: Notes from 3/1/15 Senior Staff Meeting

Not Responsive

Not Responsive

Not Responsive

Lorie also stated that, although EPA is not implementing the Clean Power Plan, we are providing assistance to states that request it. In that vein, the Administrator announced last week that we will be moving forward with the state model rules (which were proposed last August) and with actions related to the Clean Energy Incentive Program (CEIP) component of the CPP. As we

move forward, we will be certain to act consistently with the stay.

Not Responsive

"Making Agreement Easier" | (202) 564-0214
<http://intranet.epa.gov/adr> or <http://www.epa.gov/adr>

To: Hall, William[Hall.William@epa.gov]
From: Schmidt, Lorie
Sent: Fri 3/4/2016 4:06:39 PM
Subject: RE: Regional haze win in the 9th Circuit!

Not Responsive

Not Responsive

From: Schmidt, Lorie
Sent: Tuesday, March 01, 2016 11:57 AM
To: Hall, William <Hall.William@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: FW: Regional haze win in the 9th Circuit!

Will –this is for the senior staff notes. Gautam will send something separate on Murray Energy.

Not Responsive

Lorie also stated that, although EPA is not implementing the Clean Power Plan, we are providing assistance to states that request it. In that vein, the Administrator announced last week that we will be moving forward with the state model rules (which were proposed last August) and with actions related to the Clean Energy Incentive Program (CEIP) component of the CPP. As we move forward, we will be certain to act consistently with the stay.

Not Responsive

Not Responsive

Not Responsive

Not Responsive

To: Hall, William[Hall.William@epa.gov]
Cc: Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]
From: Schmidt, Lorie
Sent: Tue 3/1/2016 4:56:30 PM
Subject: FW: Regional haze win in the 9th Circuit!
[AZrh1 opinion.pdf](#)

Will –this is for the senior staff notes. Gautam will send something separate on Murray Energy.

Not Responsive

Lorie also stated that, although EPA is not implementing the Clean Power Plan, we are providing assistance to states that request it. In that vein, the Administrator announced last week that we will be moving forward with the state model rules (which were proposed last August) and with actions related to the Clean Energy Incentive Program (CEIP) component of the CPP. As we move forward, we will be certain to act consistently with the stay.

Not Responsive

Not Responsive

Not Responsive

Not Responsive

To: Hoffman, Howard[hoffman.howard@epa.gov]
From: Schmidt, Lorie
Sent: Fri 2/12/2016 8:33:45 PM
Subject: Fwd: Google / Amicus Brief

I did not get a chance to talk to Kyle after we spoke

Lorie J. Schmidt
Associate General Counsel for Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Sent from my iPhone

Begin forwarded message:

From: Kyle Danish <kwd@vnf.com>
Date: February 12, 2016 at 1:28:14 PM MST
To: "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>
Cc: "Garbow, Avi" <Garbow.Avi@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>
Subject: Re: Google / Amicus Brief

Terrific. Thanks Lorie. Howard I may have some airport time to call you but it might not work for today.

Sent from my iPhone

On Feb 12, 2016, at 1:19 PM, Schmidt, Lorie <Schmidt.Lorie@epa.gov> wrote:

Kyle. Howard is expecting your call. His number is 202-564-5582.
Lorie

Lorie J. Schmidt
Associate General Counsel for Air and Radiation
Office of General Counsel
US Environmental Protection Agency
(202)564-1681

Sent from my iPhone

On Feb 12, 2016, at 8:01 AM, Kyle Danish <kwd@vnf.com> wrote:

Many thanks for the quick response, Avi. Lorie and I happen to be at the same conference this morning, so we may have a chance to get the ball rolling. We look forward to working with you all on this.

Best

Kyle

Kyle W. Danish

Van Ness Feldman LLP

1050 Thomas Jefferson St., N.W.

Washington, D.C. 20007-3877

Ph: (202) 298-1876

Fx: (202) 338-2416

Cell: (202) 361-5621

email: kwd@vnf.com

Learn more about Van Ness Feldman by visiting www.vnf.com

From: Garbow, Avi [<mailto:Garbow.Avi@epa.gov>]
Sent: Friday, February 12, 2016 9:59 AM
To: Kyle Danish
Cc: Schmidt, Lorie; Zenick, Elliott; Hoffman, Howard
Subject: RE: Google / Amicus Brief

Thanks, Kyle. Very much appreciate you reaching out on behalf of your client. I am going to copy on this email Lorie Schmidt, Elliott Zenick, and Howard Hoffman – who are the key players in OGC working on the briefing - and ask that one of them reach out to you to set up a call soon.

Regards,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

From: Kyle Danish [<mailto:kwd@vnf.com>]
Sent: Friday, February 12, 2016 9:56 AM
To: Garbow, Avi <Garbow.Avi@epa.gov>
Subject: Google / Amicus Brief

Dear Avi:

I hope you are doing well.

As you may recall, we've been providing counsel to Google on the CPP litigation – including assisting them in preparing a declaration in support of the opposition to the stay motions in the DC Circuit.

Google is now interested in submitting an amicus brief if they can recruit some other companies that are also major purchasers of clean energy. They are in the process of doing that outreach now.

I would appreciate the opportunity to talk with you or others on your team about what would be a useful amicus brief from such a group of companies.

I'm traveling today but I will be checking my email and voicemail.

Many thanks

Kyle

Kyle W. Danish

Van Ness Feldman LLP

1050 Thomas Jefferson St., N.W.

Washington, D.C. 20007-3877

Ph: (202) 298-1876

Fx: (202) 338-2416

Cell: (202) 361-5621

email: kwd@vnf.com

Learn more about Van Ness Feldman by visiting www.vnf.com

To: Shenkman, Ethan[Shenkman.Ethan@epa.gov]; Wolfson, Steve[Wolfson.Steve@epa.gov]; Epp, Timothy[Epp.Timothy@epa.gov]; Siciliano, CarolAnn[Siciliano.CarolAnn@epa.gov]
Cc: Prabhu, Aditi[Prabhu.Aditi@epa.gov]
From: Berns, Anne
Sent: Wed 2/10/2016 5:15:01 PM
Subject: RE: Clean Power Plan

Thanks, Ethan. I just forwarded to you information on a webinar which will include a discussion of the stay. It is scheduled for today from 1 – 2:30.

From: Shenkman, Ethan
Sent: Wednesday, February 10, 2016 12:12 PM
To: Wolfson, Steve <Wolfson.Steve@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Berns, Anne <Berns.Anne@epa.gov>
Cc: Prabhu, Aditi <Prabhu.Aditi@epa.gov>
Subject: Fwd: Clean Power Plan

Sent from my iPhone

Begin forwarded message:

From: "McCabe, Janet" <McCabe.Janet@epa.gov>
Date: February 9, 2016 at 9:50:03 PM EST
To: "Goffman, Joseph" <Goffman.Joseph@epa.gov>, "Niebling, William" <Niebling.William@epa.gov>, "Jordan, Deborah" <Jordan.Deborah@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Page, Steve" <Page.Steve@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Wood, Anna" <Wood.Anna@epa.gov>, "Kornylak, Vera S." <Kornylak.Vera@epa.gov>, "Dunham, Sarah" <Dunham.Sarah@epa.gov>, "Harvey, Reid" <Harvey.Reid@epa.gov>, "Adamantiades, Mikhail" <Adamantiades.Mikhail@epa.gov>, "Garbow, Avi" <Garbow.Avi@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Jordan, Scott" <Jordan.Scott@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>, "Shenkman, Ethan" <Shenkman.Ethan@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Stewart, Lori" <Stewart.Lori@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Jones, Toni" <Jones.Toni@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Noonan, Jenny" <Noonan.Jenny@epa.gov>, "Santiago, Juan" <Santiago.Juan@epa.gov>, "Rosenberg, Julie" <Rosenberg.Julie@epa.gov>
Subject: Clean Power Plan

Friends—

As I am sure you have heard by now, the Supreme Court tonight issued a stay of the Clean Power Plan. It is a very short decision, and gives no indication of the Court's reasoning, but does indicate that the decision to issue the stay was 5-4. This is obviously very disappointing, and we are all absorbing it this evening. It is not a decision on the merits, however, and we remain as sure as we were yesterday of the sound legal basis for the rule and that the Clean Power Plan is an important, and lawful, program under the Clean Air Act to address the serious threat of climate change.

I am asking Emily to send out an invite to a call tomorrow (Wednesday) morning at 10 for the OAR and OGC CPP team to talk about the decision and next steps. Please feel free to include others not on this email. I've attached a couple of items below: the statement the White House put out tonight; the brief following statement EPA put out tonight; and an eloquent note from Avi to his staff, which I heartily endorse.

--Janet

THE WHITE HOUSE

Office of the Press Secretary

FOR IMMEDIATE RELEASE

February 9, 2016

Statement by the Press Secretary

We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation proceeds. The Clean Power Plan is based on a strong legal and technical foundation, gives States the time and flexibility they need to develop tailored, cost-effective plans to reduce their emissions, and will deliver better air quality, improved public health, clean energy investment and jobs across the country, and major progress in our efforts to confront the risks posed by climate change. We remain

confident that we will prevail on the merits. Even while the litigation proceeds, EPA has indicated it will work with states that choose to continue plan development and will prepare the tools those states will need. At the same time, the Administration will continue to take aggressive steps to make forward progress to reduce carbon emissions.

###

EPA STATEMENT:

We're disappointed the rule has been stayed, but you can't stay climate change and you can't stay climate action. Millions of people are demanding we confront the risks posed by climate change. And we will do just that. We believe strongly in this rule and we will continue working with our partners to address carbon pollution.

From: Garbow, Avi

Sent: Tuesday, February 09, 2016 9:21 PM

To: Schmidt, Lorie <Schmidt.Lorie@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Jordan, Scott <Jordan.Scott@epa.gov>; Shenkman, Ethan <Shenkman.Ethan@epa.gov>

Cc: McCabe, Janet <McCabe.Janet@epa.gov>

Subject: Clean Power Plan

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's

commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Shenkman, Ethan[Shenkman.Ethan@epa.gov]
From: Jennifer.Jacobsen@sonymusic.com
Sent: Wed 2/10/2016 3:28:08 AM
Subject: Re: Clean Power Plan

Nice email.

On Feb 9, 2016, at 10:06 PM, Shenkman, Ethan <Shenkman.Ethan@epa.gov> wrote:

Sent from my iPhone

Begin forwarded message:

From: "Garbow, Avi" <Garbow.Avi@epa.gov>
Date: February 9, 2016 at 9:21:14 PM EST
To: "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>, "Jordan, Scott" <Jordan.Scott@epa.gov>, "Shenkman, Ethan" <Shenkman.Ethan@epa.gov>
Cc: "McCabe, Janet" <McCabe.Janet@epa.gov>
Subject: Clean Power Plan

Folks,

We are all digesting the difficult news of the Supreme Court's granting of the stay application. There is no sugar-coating it. But I just want you all to know how proud I am (as is the Administrator, Janet, and so many others) of the work you all have done and will continue to do with OAR and others – both with respect to the Clean Power Plan, and also on so many other aspects of the Agency's work to address climate change. The Supreme Court may have stayed the rule, but they did not and cannot stay the Administration's commitment to do all we can to act on climate change. There is so much we have already done, and so much we will continue to do, working with our partners all across the country to continue the momentum you have helped to start.

So, let's do what we do best. Let's keep our eyes on the prize, which is to fulfill the mission of this Agency using all of our legal tools, policy choices, and the multiplying power of engagement, to turn around our changing climate for a more stable and sustainable future.

Peace,

Avi

Avi Garbow

General Counsel

U.S. Environmental Protection Agency

(202) 564-8040

To: Berns, Anne[Berns.Anne@epa.gov]
Cc: Epp, Timothy[Epp.Timothy@epa.gov]
From: Shenkman, Ethan
Sent: Thur 2/25/2016 10:00:53 PM
Subject: RE: press guidance re int'l impact of stay

Not Responsive

Not Responsive

From: Berns, Anne

Sent: Thursday, February 25, 2016 4:47 PM

To: Shenkman, Ethan <Shenkman.Ethan@epa.gov>; Wolfson, Steve
<Wolfson.Steve@epa.gov>

Cc: Epp, Timothy <Epp.Timothy@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Sublett,
Stacey <Sublett.Stacey@epa.gov>

Subject: RE: press guidance re int'l impact of stay

I'm sure you have all probably heard that a similar stay is now being sought re: MATS.

From: Shenkman, Ethan

Sent: Thursday, February 25, 2016 2:34 PM

To: Wolfson, Steve <Wolfson.Steve@epa.gov>

Cc: Berns, Anne <Berns.Anne@epa.gov>; Epp, Timothy <Epp.Timothy@epa.gov>; Prabhu, Aditi <Prabhu.Aditi@epa.gov>; Sublett, Stacey <Sublett.Stacey@epa.gov>

Subject: Re: press guidance re int'l impact of stay

More recent would be the remarks the admr delivered yesterday to an industry group I believe

Sent from my iPhone

On Feb 25, 2016, at 12:31 PM, Wolfson, Steve <Wolfson.Steve@epa.gov> wrote:

Here again is the press guidance from State on int'l impact; checking w/ ARLO & OAR on whether there is anything subsequent

PA Press Guidance

February 10, 2016

Supreme Court – Clean Power Plan Stay

TOPLINE:

- We disagree with the Supreme Court's decision to stay the Clean Power Plan while litigation continues.
- We remain confident that we will prevail on the merits when the Clean Power Plan gets its full day in court.

- Most importantly, we remain strongly committed to implementing the Paris Agreement and to meeting the 2020 and 2025 targets that President Obama has established.
- As the litigation proceeds, the Administration will continue to take aggressive steps to reduce emissions from cars and trucks, the oil and gas sector, aircraft, HFCs [hydrofluorocarbons] and through energy efficiency standards.
- With continued Administration action, we will remain on track to achieve our economy-wide emissions reduction goals.

How does this stay impact the Paris Agreement?

- We remain strongly committed to implementing the Paris Agreement and to meeting the 2020 and 2025 targets that President Obama has established. The Clean Power Plan is an important component of our plan for meeting those targets and we are confident that we will prevail in our defense of it.
- At the same time the Administration is pursuing a broad range of policies to reduce emissions from cars and trucks, the oil and gas sector, aircraft, HFCs and energy efficiency standards.

- And in the power sector specifically, long-term extensions of the renewable energy tax credits enacted at the end of 2015 ensure that the momentum to cleaner sources of energy and lower emissions in the power sector will continue.
- Finally, it is important to note that the Clean Power Plan litigation is expected to conclude years before the emission reduction requirements in the Clean Power Plan would take effect. We are confident that we will ultimately succeed in defending the rule against all the legal challenges and that we will be able to implement the Clean Power Plan.

What is the impact of the Supreme Court's decision to stay the Clean Power Plan on the ability of the United States to achieve its 2025 climate target set out in the context of the Paris Agreement?

- The Supreme Court decided to suspend or "stay" the implementation of the Clean Power Plan while a legal challenge is being considered by the courts.
- We disagree with the Court's decision, but we are confident that we will ultimately prevail on the merits of the case when the Plan has its full day in court. We believe that we will remain on track for reaching our 2025 climate target.

Doesn't the decision to suspend the implementation of the CPP now suggest that the United States may lose the case and not be able to implement the CPP?

- The Supreme Court's decision simply puts the rule on hold until all of the legal challenges are considered and resolved by the courts.
- We are confident that we will ultimately succeed in defending the rule against all legal challenges and that we will implement the CPP.

How does this outcome impact the overall climate objectives of the United States and your confidence in achieving your targets?

- The Obama Administration will continue to press forward with a comprehensive plan to combat climate change.
- We remain strongly committed to implementation of the Paris agreement and to meeting the 2020 and 2025 targets that President Obama has established.

Have you been in touch with other countries regarding the Supreme Court's decision?

- We have a well-established and robust post-Paris diplomatic outreach effort – which includes bilateral and multilateral engagement. That effort is ongoing and will certainly continue.

My understanding is that to grant a stay, a court must consider, among other things, whether the party seeking a stay has a likelihood of success on the merits. With the U.S. Supreme Court itself having evidently considered that, wouldn't you agree that five Supreme Court justices are skeptical of the Clean Power Plan?

- Yes, that is one factor, but we are confident that when the Clean Power Plan gets its full day in court, we will prevail on the merits. And this would not be the first time, in an environmental case or in another case, that a rule was stayed but ultimately upheld.

Let us just assume, for a moment, that the Clean Power Plan is invalidated in the end, as the Supreme Court order suggests is possible, if not likely. Then won't the United States have to revise its 2025 target?

- We are not going to engage in speculation. The Supreme Court's action simply puts the rule on hold until all of the legal challenges are considered and resolved by the courts. We are confident that we will ultimately succeed in defending the rule against all legal challenges and that we will be able to implement the CPP.

How does this outcome impact the overall climate objectives of the United States and your confidence in achieving your targets?

- We remain strongly committed to implementation of the Paris agreement and to meeting the 2020 and 2025 targets that President Obama has established. The Clean Power Plan is a component of our plan for meeting those targets and we are confident that we will prevail in our defense of it.
- At the same time the Administration is pursuing a broad range of policies to reduce emissions from cars and trucks, the oil and gas sector, aircraft, HFCs and through energy efficiency standards.
- And in the power sector specifically, long-term extensions of the renewable energy tax credits enacted at the end of 2015 ensure that the momentum to cleaner sources of energy and lower emissions in the power sector will continue.
- Finally, it is important to note that the Clean Power Plan litigation is expected to conclude years before the emission reduction requirements in the Clean Power Plan would take effect. We are confident that we will ultimately succeed in defending the rule against all the legal challenges and that we will be able to implement the Clean Power Plan.

Steve Wolfson

US Environmental Protection Agency

Office of General Counsel – International Law Group

WJC North, Room 7506C

202 564-5411